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REASON

Free Minds and Free Markets®

February 2000

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By Brian Doherty

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  By Jesse Walker
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  By Nick Gillespie

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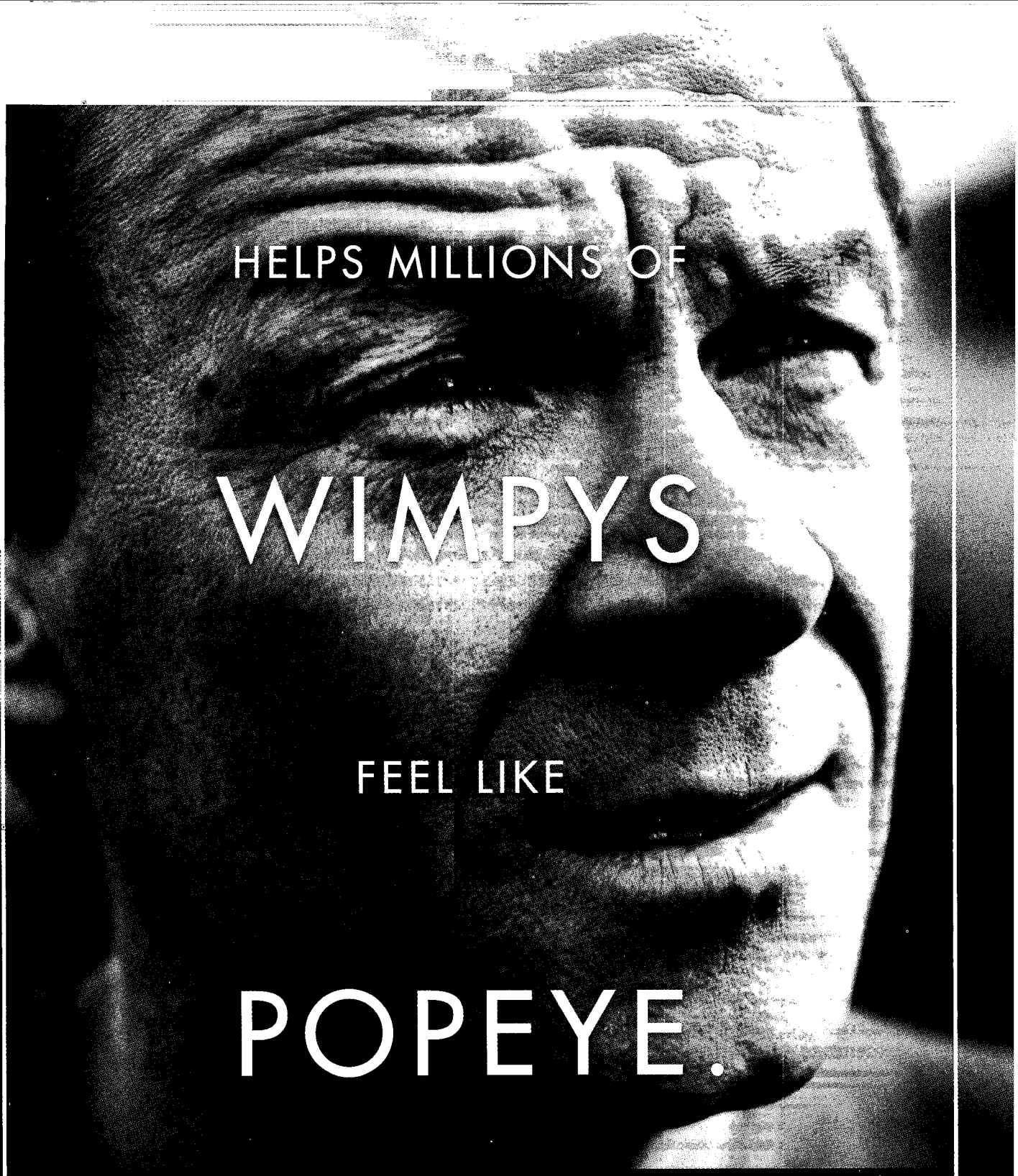

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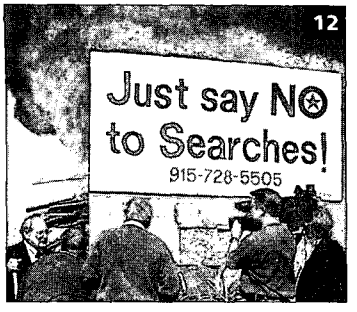

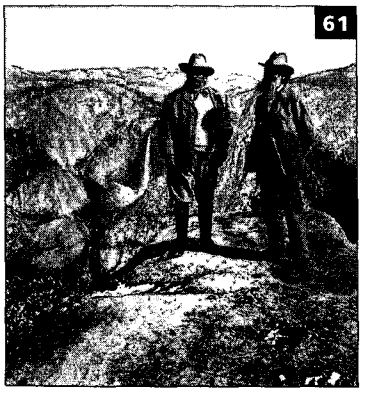

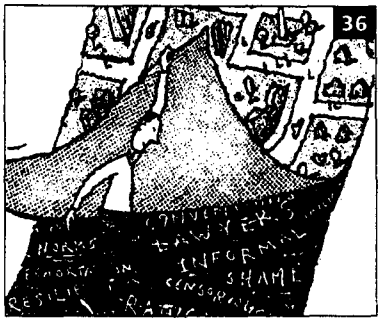

24 Burning Man Grows Up by Brian Doherty
Can the nation's premier underground event survive its own success?

36 Conventional Wisdom by Jonathan Rauch
Rediscovering the social norms that stand between law and libertinism.

42 Reality Principles: An interview with John R. Searle by Edward Feser and Steven Postrel
Eminent philosopher John R. Searle defends free speech, free inquiry, and the Enlightenment.

52 The Broken Blue Line by Jesse Walker
How to start a riot.

56 Pot Stickers by Steven Hayes
Indiana tries to punish a marijuana grower twice.

Editorials

4 Seattle Surprise by Virginia Postrel
The WTO protests caught free-traders off guard. They shouldn't have.

6 Orphans of Trade by Nick Gillespie
How to help all of Cuba's children.

Columnists

20 Capital Letters: Kids' Beat by Michael W. Lynch
In which our man in Washington explores the constitutional status of video games, hears the declinist take on kids, and watches John McCain wow Yalies.

58 Reasonable Doubts: Gold Bugs by Walter Olson
Class action lawyers discover Silicon Valley.

74 Selected Skirmishes: Wiring Washington by Thomas W. Hazlett
How to make a killing in cable.

Books

61 Preservation Instincts by Ronald Bailey
Hard Green: Saving the Environment From the Environmentalists: A Conservative Manifesto, by Peter Huber

64 The Cogs of War by Michael McMenamin
A Republic, Not an Empire, by Patrick J. Buchanan
Five Days in London, May 1940, by John Lukacs

67 Muddled Masses by Stuart Anderson
Heaven's Door: Immigration Policy and the American Economy, by George Borjas

70 That Indie Jones by Steve Kurtz
Stranger Than Paradise: Maverick Film-Makers in Recent American Cinema, by Geoff Andrew

Departments

8 Letters

12 Citings

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Seattle Surprise

The WTO protests caught free-traders off guard. They shouldn't have.

By Virginia Postrel

When protesters descended on Seattle in the tens of thousands, blocking World Trade Organization delegates and ordinary citizens from going about their business and, in some high-profile cases, wrecking "corporate" stores, the mainstream media and political establishment finally woke up to an ideological movement that has been building for at least a decade. International trade is no longer just a matter of interest-group politics. It has become a highly charged symbol of markets in general and, even more broadly, of the cultural dynamism that they unleash.

The protests in Seattle were not about the World Trade Organization per se. They were, as Tom Hayden told a rally in Seattle, about "everything." Some protesters were against development, some against growth, some against low-wage work in poor countries, some against resource extraction, some against consumption, some against biotechnology, some against killing animals, some against highly restrictive intellectual property laws, some against property rights of any kind. Just about all of them were against change without political regulation.

"It is no longer a debate about trade at all, but rather a debate about globalization, a process that many now understand affects not only traditional economic factors such as jobs and incomes but also the food people eat, the air they breathe, the quality of medical care, and the social and cultural milieu in which they live," wrote *The Washington Post*'s left-wing business writer Steven Pearlstein. Into his list of woes Pearlstein lumped "the loss of the corner bookstore," a development that has nothing to do with globalization but is a touchstone example of economic and cultural dynamism.

Pearlstein and Hayden are right: This argument has precious little to do with the particulars of the WTO. It is indeed about "everything," or close to it. The trade diplomats' Seattle meeting merely provided a focal point for protest. It gave activists an easily accessible place to gather, and a promise that cameras would be there to greet them.

Seattle was a sharp reminder that free trade—like free speech, the emancipation of women, or scientific inquiry—is not inevitable. We do not live, through some irresistible force of nature, in what *New York Times* columnist Thomas Friedman smugly calls a "world without walls." Walls come down largely through acts of political will, and they can be erected the same way.

The world is full of dedicated believers—many of them loud, affluent, technologically savvy, and well-organized—who will fight to build walls against people, ideas, or goods they don't like and who will seek to trap others in political regimes from which they cannot escape. In Seattle, we saw a small sample of the many, many people who are determined to maintain a particular "social and cultural milieu" against the choices of their fellow citizens and the aspirations of human beings around the world.

What was at stake in Seattle is far more important to the peace, prosperity, and happiness of the world's billions than George W. Bush's reading list, John McCain's temper, Hillary Clinton's Senate aspirations, or the latest tax cut proposal for parents of young children. Seattle was about "everything." It was a protest meticulously orchestrated by people determined to stamp out the technological creativity, capital mobility, competitive production, and consumer choice that lead to rising living standards. It was designed to substitute the "democracy" of interest-group lobbying and ideological protest for the individual pursuit of happiness.

As some critics charged, the Seattle protesters represented many, often incompatible agendas. What united them was the shared craving for a more static, regulated world. What divides them is the question of what that world should look like.

With the exception of self-interested union members, the Seattle protesters were mostly from the political left, which sees international trade as an issue it can leverage to undermine the widespread belief that market exchange (or prosperity itself) is good.

"The market has to be re-embedded, has to become a subordinate part of the society again," said Walden Bello, a professor at the University of the Philippines in a forum on globalization published in *The Nation*'s pre-Seattle special issue. "Values like social solidarity have precedence over the free market."

In the struggle to subordinate market choices to "social solidarity," the left is understandably worried that the current anti-trade standard bearer is Pat Buchanan, a man whose social values are tribalist and traditional. In their discussion of news coverage of the protests, the leftist media critics at Fairness and Accuracy in Reporting zapped CNN and others for paying too much attention to Buchanan: "Though right-wing nationalists appeared to make up—at most—an infinitesimal fraction of the actual protesters in Seattle's streets, the media seemed to anoint Buchanan as a major leader of the anti-WTO movement." In one important sense, Buchanan is just that. He is the only prominent presidential candidate advocating the anti-trade agenda of the protesters, the only agenda they share. It's not surprising, therefore, that Beltway-oriented shows like *Inside Politics* interviewed him rather than, say, Walden Bello or Tom Hayden.

While Buchanan's tribalism may not blend well with multiculturalism or gay rights, his isolationist ideals are consistent with the far green's "bioregionalist" vision of local self-sufficiency. Nor is his contempt for poor countries out of place. A

strong theme running through the anti-globalization critique is that higher living standards in developing countries would be a disaster. At a Seattle teach-in, reports Nina Shapiro in *Salon,* Swedish activist Helena Norberg-Hodge complained that "in the South [meaning Africa, Asia, and Latin America, though the same could be said of Buchanan's beloved Dixie], this globalization has taken the form of development." Using typical green rhetoric, Norberg-Hodge called for "localization" and "self-reliant" subsistence agriculture—a prescription that would have left Sweden impoverished but is apparently good enough for Third World peasants.

Neither compassion nor consistency is the anti-trade forces' strong suit. "It's unthinkable that the billions of people we expect to greet in the next century should all be encouraged to strive for the American dream of a suburban house, a car and everything that Wal-Mart or Sears sells," writes *Los Angeles Times* technology columnist Gary Chapman in an article on the protests. "Under that model, the human race would devour the Earth very rapidly, as we seem to be doing already."

Chapman, who lives in Austin, Texas, wasn't in Seattle himself. He tells subscribers to his e-mail list that he and his wife spent Thanksgiving week in New York "doing nothing but touristy things and getting an annual cultural fix—seeing plays, going to concerts, movies, museums, visiting the Christmas lights at the Bronx Zoo, etc." I'm sure their cultural enrichment, along with a "sumptuous" Thanksgiving dinner, would be of great comfort to the world's peasant farmers—the people whom Chapman is determined to keep barefoot behind their water buffalo lest their upward mobility disturb his cultural milieu.

Attitudes like Chapman's and Norberg-Hodge's naturally infuriate representatives of poor countries. The protesters, wrote Lim Say Boon in the *South China Morning Post,* were "rich bullies... determined to maintain their lifestyle fetishes," with disdain for Third World workers: "They would be quite happy to keep Asians in their place to satisfy their Hollywood stereotypes of what we are supposed to be. The holiday experience would not be complete without the sight of Chinese living in boats off Hong Kong; Ibans in their jungle long-house in Sarawak; or Javanese women toiling in the rice fields. The parents of these new racists would have cooed 'how quaint'—as if gawking at animals in the zoo. To this grunge generation, this would be preserving indigenous cultures. Same old racism in new, dishonest packaging if you ask me."

This critique isn't entirely fair, but the anger behind it is heartfelt. Global markets are giving poor countries a shot at prosperity, and the attack on trade is an attack on that hope. The protesters, an Indian participant told *Salon*'s Shapiro, were "like Marie Antoinette, saying let them have cake." Self-sufficiency sounds romantic and independent, but it is a prescription for poverty. While many protesters seemed genuinely concerned about the fate of the world's poor, the policies they advocate would cut off the only processes through which living standards improve.

Rising living standards—whether in a village, a region, a nation, or the world—depend first on specialization: on letting people concentrate on what they do best and trade with others who specialize in other things. The part of this process that is hard for anyone but economists to understand, because it is not intuitive, is that success doesn't depend on doing something better than the person (or country) with whom you're trading. As my economist husband likes to put it, there's a good reason that Michael Jordan doesn't mow his own lawn. Jordan might be the best mower in the world, but his time is more productively used elsewhere. As societies grow richer, they also become more and more specialized, a process that is both cause and effect.

The countries of the Third World want the chance, in effect, to cut the grass for the basketball stars of the rich West. Their workers would like the opportunity to specialize in labor-intensive drudgery that creates products for which people elsewhere are willing to trade. Through

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REASON
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President and Publisher Robert W. Poole Jr. *(bobp@reason.com)*

Editor Virginia Postrel *(vpostrel@reason.com)*
Executive Editor Nick Gillespie *(gillespie@reason.com)*
Senior Editors
Charles Paul Freund *(cpf@reason.com)*
Jacob Sullum *(jsullum@reason.com)*
Associate Editor Jesse Walker *(jwalker@reason.com)*
Washington Editor Michael W. Lynch *(mlynch@reasondc.org)*
Assistant Managing Editor Mariel Garza *(mariel@reason.com)*
Science Correspondent Ronald Bailey *(rbailey@reason.com)*
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Contributing Editors
Gregory Benford, James V. DeLong, Edith Efron, Glenn Garvin, Steven Hayward, Thomas W. Hazlett, David R. Henderson, John Hood, Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, John J. Miller, Charles Oliver, Walter Olson, John J. Pitney Jr., Thomas Szasz, Frederick Turner, Martin Morse Wooster, Cathy Young
Cartoonists
Chip Bok, Henry Payne, Scott Stantis

Public Affairs Director Mike Alissi *(malissi@reason.com)*
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Volunteer Anthony Brown
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Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
310-391-2245 Fax: 310-391-4395
(letters@reason.com)
(permissions@reason.com)
Washington Office
1717 Pennsylvania Ave., NW, Suite 260
Washington, DC 20006
202-955-1324 Fax: 202-955-3187
Advertising Sales
The Townsend Group, Inc.
7514 Wisconsin Ave., #350
Bethesda, MD 20814
301-215-6710 Fax: 301-215-7704
(ads@reason.com)
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that trade, the poor people of the world can obtain goods produced in capital- and skill-intensive industries abroad—pharmaceuticals, refrigerators, even movies and basketball—and the capital needed to invest in productive infrastructure. Without the specialization and exchange, these products would be impossible to obtain. So what look like bad jobs at bad wages are in fact the paths out of poverty.

Would it be better if poor people around the world could have fun at work? Absolutely. Unfortunately, the choice they face today is not between drudgery and fun. It is between drudgery without exchange—self-sufficiency without the bonus paid by other people to avoid it—and drudgery with the possibility to accumulate the skills, property, and perhaps capital that represent a better life.

There are other, more upbeat, aspects of trade. One is the creativity encouraged by competition: the open-ended push to do more, better, with less. The vast improvements in the quality of products from shoes to automobiles over the past 20 years has made us all effectively richer.

And that improvement is not just a matter of competition. Worldwide markets also foster the exchange of knowledge. They bring more minds, working from more different perspectives, to every problem. International exchange carries knowledge through words, of course, but also through experience—as people move across companies and countries—and through products, customs, and services themselves.

These processes are abstract and mysterious when they happen to other people. And they are so particular, real, and incremental that we barely notice them when we experience them ourselves. We assume that toys have always been cheap, clothes always abundant, menus always varied, and Japan always rich. We get lulled into believing that free trade with poor people will make us poor ourselves, forgetting that we live in the world's largest, and most prosperous, free trade zone, and that the people of California have not been immiserated by the rising wealth of Georgia.

Seattle was about "everything." Most particularly, it was about whether we will allow the complacency that comes with affluence—the assumption that good times will continue because the institutions that support them are inevitable—to wreck not only our own hopes but the hopes of humanity worldwide. People who want to build walls never, ever give up.

Orphans of Trade

How to help all of Cuba's children

By Nick Gillespie

It's fitting that the saga of Elian Gonzales, the young Cuban refugee rescued off the coast of Florida, unfolded coincidentally with December's World Trade Organization meeting in Seattle. Like the WTO event, Elian's story—now playing out as a geopolitical custody battle—raises deep questions about international trade and economics more generally. The boy has lost his mother and is separated from his father, but his situation reminds us that all Cubans face loss on a daily basis: They are orphans of trade, suffering under policies that minimize the commercial activities that would make their lives richer both in goods and opportunities.

Late last year, Elian, his mother, and 12 other people boarded an overloaded 17-foot-long aluminum motorboat and surreptitiously set sail for America across famously treacherous, shark-filled waters. Within hours, the boat capsized, and eventually all but Elian and two other passengers drowned. That sane people are willing to take such risks suggests the desperation of life for many in Castro's Cuba (that the U.S. Coast Guard reported intercepting more than 1,200 similar "rafters" in 1999 only underscores the

extent of the problems there).

Castro's economic policies are a prime mover in this tragedy. As one of Elian's Florida-based relatives suggested to the press, the lure of the U.S. to Cubans is closely linked to the greater economic opportunities here. If the courts rule that Elian can stay in the U.S., "he's going to have a future, a career, all the things he wouldn't have there," said the relative.

Despite his continual pronouncements that the 39-year-old U.S. trade embargo is the root of Cuba's misery, Castro has long pursued economic policies every bit as repressive as his political ones; his nation routinely scores at the very bottom in international rankings of economic and political freedom. The predictable result: Though free to deal with all but the U.S. and rich in potential, the Cuban economy produces virtually nothing of value to trade. Many basic items continue to be rationed in a world economy overstocked with commodities of every sort.

Following the fall of the Soviet Union—and the loss of subsidies that amounted to as much as $100 billion between 1961 and 1989—Castro did liberalize the economy somewhat. In the mid-1990s, for instance, he legalized use of U.S. dollars in certain sectors, allowed greater foreign investment, and made it easier for Cubans to register as "self-employed" and start their own businesses.

However, such entrepreneurial activity is by its nature disruptive and decentralizing, and the 73-year-old ruler has more recently reasserted economic controls. High taxes and fines have reduced the officially "self-employed" from about 200,000 in 1996 to around 133,000 today, and, as the *Ft. Lauderdale Sun-Sentinel* reports, fickle government policies have substantially slowed new foreign investment (down 50 percent between 1997 and 1998). Unsurprisingly, Political Risk Services, a consulting firm that gauges international investment conditions, now ranks Cuba's business climate in the bottom five of the 100 countries it analyzes.

Such restrictive policies led to 14 people—a 5-year-old boy among them—putting out to sea in an absurdly undersized vessel. They also led to the sort of bizarre dualism articulated by a Cuban in an interview about Elian's situation with an American journalist: "Maybe in the United States he'd have better economic conditions. Here, he'd be with the people who love him." Castro, it seems, has managed to create a world in which providing "better economic conditions" for children is seen as opposed to loving them. If so, then he has indeed succeeded in one of great goals of socialist revolutionaries, the creation of a "new man" untainted by bourgeois capitalist morality.

While Castro's economic policies are fundamentally responsible for his countrymen's poverty, the United States is not powerless to ameliorate the situation. Enacted in 1961, the American trade embargo with Cuba has failed spectacularly in its basic goal of undermining support for Castro's regime. If anything, it has simply given the dictator an easy way of explaining his failures and a ready justification for the next "special period" of austerity measures. As a spokesman for Human Rights Watch, which issued a scathing, 263-page indictment of Cuba's human rights abuses last year, put it, the embargo "has divided the international community and enabled Castro to justify repression on anti-imperialist grounds."

To its credit—and over opposition from a powerful Cuban-American presence in Congress—the Clinton administration last year eased certain elements of the embargo, allowing U.S. citizens to send up to $1,200 a year directly to Cubans, opening up some mail service and flights, permitting limited food and medical sales to nongovernmental groups, and encouraging cultural exchanges, including athletic competition and study-abroad programs. If the U.S. government actually wants to do "what's right" for Elian—and the other children of Cuba—it should work to finish the job and allow Americans to invest in the island.

The time seems right for such a reconsideration. Even before Elian's story became news, there was a flurry of interest in Cuba-U.S. relations and a renewed sense of the embargo's failure. In late November, Rep. Mark Sanford (R-S.C.), a one-time supporter of the embargo, openly violated it by traveling to Cuba as a private citizen. Upon his return, he proposed legislation lifting the ban on travel to Cuba, arguing, "If we want to create change in Cuba, let ...average American citizens interface with Cubans." His thoughts mesh with those of two other recent U.S. travelers, Illinois Gov. George Ryan and U.S. Chamber of Commerce head Thomas J. Donohue. As Donohue put it, "We...have an opportunity to help Cuba move to the right side of history, even if Castro won't."

Ending the embargo—in part or in whole—would not topple Castro even as it would rob him of his great canard. Indeed, given the way Castro has structured other foreign investments, his regime would likely profit handsomely from any new business. Most foreign investors do not technically employ Cubans; rather, they pay a per-worker fee to a government organization which in turn pays workers a fraction of the amount.

Still, as China is discovering, increased economic activity and contact with the outside world are impossible to contain fully; even if Castro remained in power, he would be far less powerful in a country of wealthier people. Perhaps more important, ending the embargo would subversively—and indelibly—sketch the outlines of a post-Castro Cuba, one in which children need not leave their own shores to find a world of opportunity.

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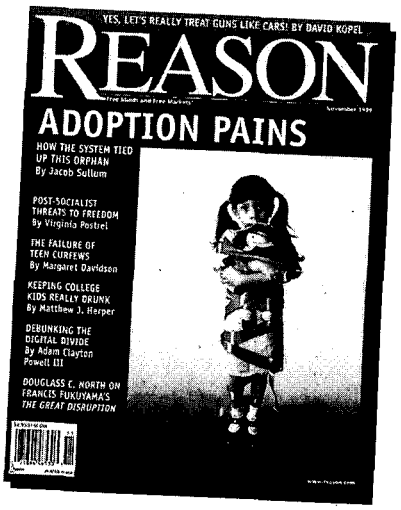
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Systemic Woes

I very much enjoyed the story of Francine's adoption ("Adoption Pains," November). It was nice to hear a child welfare tale with a happy ending. But I'm afraid that Mr. Sullum has an inadequate understanding of those—by far the majority—that do not end well.

My first clue that he was off base was when he portrayed Paula Hepner as one of the villains of the piece. I worked with Judge Hepner in the mid-'80s, when I was a child welfare worker and she was a lawyer for the Administration for Children's Services (then known as Special Services for Children). She was a dedicated, tireless, and brilliant advocate for the well-being of the children we tried to serve. I don't believe people like her lose that fire.

I wasn't there when she handled Francine's case, so I will grant that she may have made a mistake. But if so, then I feel confident that it was an honest mistake, not one of whim or caprice. And Mr. Sullum can take consolation from this: If his criticisms are even a little bit just, Judge Hepner is likely to take them to heart and subject herself to intense self-examination. That's just the kind of lady she is.

I can assure Mr. Sullum that Judge Hepner was not thinking about her name in *The New York Times* that day. But he pooh-poohs that she might have been thinking about the following:

1) Joel Steinberg. Mr. Sullum regards it as unlikely that he might be a Joel Steinberg. But of course it was Judge Hepner's duty to try to be sure, not to play percentages. Mr. Steinberg practiced as an adoption lawyer for many years and abused his position to adopt the little girl whom he later tortured and murdered.

2) Lawyers. Mr. Sullum tells us that his lawyer made assurances to the judge. Mr. Sullum, do you routinely trust the assurances of lawyers?

3) The grandmother. Mr. Sullum describes the grandmother as "legally blind and in poor health." His wife was the grandmother's chaplain during a period of bereavement. Wouldn't he expect a judge to make sure consent was given freely, knowingly, without undue influence, and solely with Francine's interests in mind?

4) Relatives. Mr. Sullum tells us that there were no relatives other than the grandmother to assert a claim to Francine. But how could Judge Hepner be sure?

One of Mr. Sullum's most precious possessions today, I'll bet, is the knowledge that Francine's adoption cannot be overturned. To accomplish that power of finality the law goes to lengths to see that all claims are resolved beforehand.

I understand that Mr. Sullum is unhappy with a ruling which presumably sent Francine back to be tied once more into a wheelchair. But I think his anger is misplaced. What kind of hospital ties up a 3-year-old because it cannot give her a safe play environment?

I am sure that the quality of service he received from ACS was atrocious. The most able and (especially) most motivated workers are usually sent to the "front lines," that is, to investigate abuse and neglect reports. This is a job of mind-boggling awfulness. Most quit and many of the rest burn out. The burnouts, and those not considered top-grade from the start, are frequently shuffled into the support jobs. The adoption unit would likely have been one of those.

Child welfare is an awful career path, and in New York, thanks to Mayors Koch and Giuliani, it has gotten worse. The job pays terribly and has now been reduced to a single promotional opportunity.

Mark Reid
Mineola, NY
xuequin@prodigy.net

I was saddened to read about the ordeal Jacob Sullum had to go through to give Francine a warm, loving home, particularly how professionals would risk moving a child from foster home to foster home or use it as a threat. I have worked in state foster care and adoption for 12 years. I have seen the trauma, loss, and lifelong problems children experience from multiple moves. The Sullum's daughter will have enough to deal with in her life having lost her birth mother.

Diane Dexter
Adoption Chief
Department of Social Services
Waterbury, VT
ddexter@srs.state.vt.us

My wife and I are trying to adopt twin boys through the Jewish Child Care Association. My wife quit a lucrative job to stay at home to raise the boys (they just turned 2). We were led to believe that the process would take about six months. It's been a year now, and I don't see an end in sight.

We are working hard to make ends meet. ACS keeps losing forms, the JCCA keeps losing staff, and my wife and I

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Los Angeles, CA 90034-6064

are losing our patience. The boys call us Momma and Daddy and are doing better than they ever have. However, if this process does not end soon we all may lose out and my wife and I will have to move on.

B. Keith Fulton
New York, NY
bkfulton@aol.com

Having just completed two years in the dependency and adoption division of the circuit court, I found your article depressingly familiar.

Considering that the well-being of a small child is at stake, there is no excuse for it taking two years to investigate prospective adoptive parents. The reason it does, in my opinion, is reluctance by the social services agency and the judges to make a decision until absolutely forced to. Nobody wants to be blamed for making a decision if it later proves tragically wrong. This deliberate indecisiveness perpetuates a system not in the best interests of the children or the adoptive parents.

Dennis Maloney
Circuit Judge
Bartow, FL
dpm1946@aol.com

Jacob Sullum replies: I thank Ms. Dexter and Judge Maloney for their comments, and I hope that everything works out well for Mr. Fulton and his wife.

Contrary to Mr. Reid's implication, my wife and I were not asking Judge Hepner to finalize the adoption; we were merely seeking temporary custody. Since we had passed the background checks and undergone two home studies—points on which the judge did not need to take our attorney's word, since they were matters of record—this seemed a reasonable request. Whether or not Judge Hepner planned to grant our petition, there was no justification for her hostile and suspicious attitude. Treating my wife and me as if we were trying to pull a fast one, she falsely accused us of lying about the timing of the JCCA home study and other readily verifiable facts.

Mr. Reid emphasizes the need to be "sure" that people seeking to adopt a child will make good parents. But there is always the possibility that seemingly normal, decent people will turn out to be capable of abuse. A system that insisted on certainty about such matters would be a system that never approved an adoption.

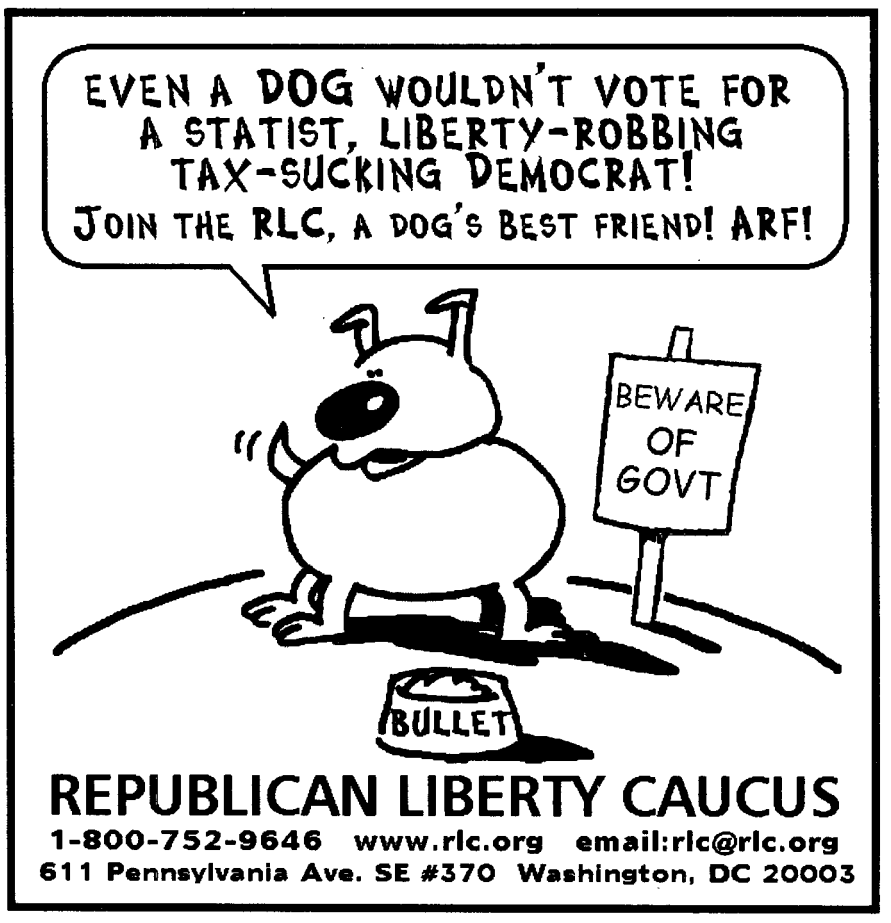
Finally, I'd like to make it clear that we believe Francine received good care at the Rusk Institute, where the staff seemed quite competent and compassionate. Given the hazard from the omnipresent wheelchairs, we do not fault them for keeping Francine in one when they were not able to supervise her closely. Her eagerness to get out and run around was simply an indication that she was kept in the hospital longer than necessary—which, though by no means ideal, was preferable to putting her in a foster home.

Parity Disparity

I was saddened by Nick Gillespie's piece on the Educational Testing Service's aborted "strivers" program ("Striving for Parity," November). The program, which would have added SAT points for disadvantages overcome by a student, is redistributive in nature. That is clearly Gillespie's objection, and why he considers it "insidious." Leave the system alone, Gillespie argues, so my son keeps his step up, and so kids with less than my son won't easily surpass him.

I'm old enough to remember a time in this country when it was embarrassing to make arguments that were so blatantly drenched in self-interest. I've also spent the last 12 years working closely with the SAT, and I've witnessed the injury it has done to kids who are poor, rural, underrepresented minority, and female. My work is to help mitigate some of that damage until the test is abolished. The SAT, as it is now configured, gives Gillespie's son a clear advantage. The SAT permits successful parents to efficiently and effectively transmit their college admissions advantages to their children.

At bottom, Gillespie is simply ungracious. He has enjoyed some upward social mobility and wants to maintain his gains. Now he wants to pull up all the ladders and not create any new ones. Gillespie might next argue for strivers points for the rich.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But they don't need them—they already have the SAT.

Jay Rosner
The Princeton Review Foundation
Mill Valley, CA
jayr@review.com

Nick Gillespie's article on the now defunct "strivers" program was one of the most mean-spirited essays REASON has ever published. Is Mr. Gillespie claiming that most children coming from impoverished families and neighborhoods and high schools are not at a disadvantage competing against children from more affluent areas? Is he claiming that society has no obligation to try to level the playing field?

Gillespie writes, "I assume that my son would be hard-pressed under a strivers regime to ever distinguish himself." He seems to believe that his child, with two parents with Ph.D.s, will have a problem competing with those from less advantaged backgrounds. If his son grows up with that sort of logic, he will indeed be hard-pressed to distinguish himself.

Gillespie also states, "By holding against children the advantages parents have worked to give them, programs such as the strivers initiative punish such behavior even as they deny it exists." I presume you have no problem with wealth transfer as well as intellectual and ambition transfer. I must then assume you agree with the plan of many Republican legislators to get rid of the inheritance tax. Let's go all the way to a Third World society, with the better people living on the hill in their gated communities with the one-way glass gazing at the rest of us down below.

Frank Williams
Palo Alto, CA
chekov@batnet.com

Nick Gillespie replies: Jay Rosner, Frank Williams, and I all agree that class mobility is a good thing. We disagree on whether substantial mobility exists in the contemporary U.S. and what best facilitates it.

As I wrote, the most extensive longitudinal study of the matter, a University of Michigan study of more than 50,000 taxpayers, documents that it does exist. These findings accord with those of virtually all other studies that track specific individuals over time. Together, they suggest an America that, far from being a caste system, is fluid in a way Messrs. Rosner and Williams must surely approve. What I find "insidious" about the strivers initiative is precisely that it ignores this reality and thus presents a distorted picture of American society. Such plans also obscure, discount, and weaken what I called "generational striving," parents' efforts to give their children advantages.

I applaud Mr. Rosner's work with underprivileged kids, though it's worth noting that his employer is the nonprofit arm of Princeton Review, the SAT prep course company that makes its money by charging about $750 to mostly middle- and upper-middle-class kids and guaranteeing a 100-point gain on their total scores. Princeton Review is as tied to the test as its fiercest supporters. To its credit, it has demystified much about the SAT and demystification is always to the good in an open society.

Contrary to Mr. Rosner, however, I wouldn't lay the educational problems of the poor or underrepresented minorities at the feet of the SAT, especially since most college students attend schools with open or near-open admission policies where SAT scores don't really matter. Although he accuses me of wanting to "pull up all the ladders and not create any new ones," nothing could be further from the truth. Here's one idea: We should radically deregulate public education, a far more obvious source of "injury" to the relatively poor than the SAT. Despite spending about four times as much per pupil (in constant dollars) as it did in the 1950s, the U.S. public school system provides a substandard education, especially to low-income students. There's a good reason why support for school vouchers is so strong among poor inner-city residents.

If Mr. Williams is a regular reader of REASON, he knows I'm no fan of Republicans. But if he is interested in furthering class mobility, he should in fact think seriously about abolishing estate taxes, which rarely hurt the mega-rich but often effectively dissipate the wealth of the ascendant middle class. Indeed, while redistributive or "progressive" taxation is typically sold as a means of helping the poor, its actual effect is to reinforce class. It's no accident that countries with high taxes also have little class mobility.

Mr. Williams asks whether parents should be able to give their children money as well as brains and ambition. None of these things can be transmitted with much certainty. One of my favorite days in high school was when SAT scores came back and I realized that I'd done better than most of my classmates from more privileged backgrounds; there's a real limit to what parents can do to ensure the success of their children, as I fear my own son will learn one day. But undercutting those efforts serves no purpose other than to weaken a system that is already pretty good at redistributing income, opportunity, and wealth.

Flawed Digital Data

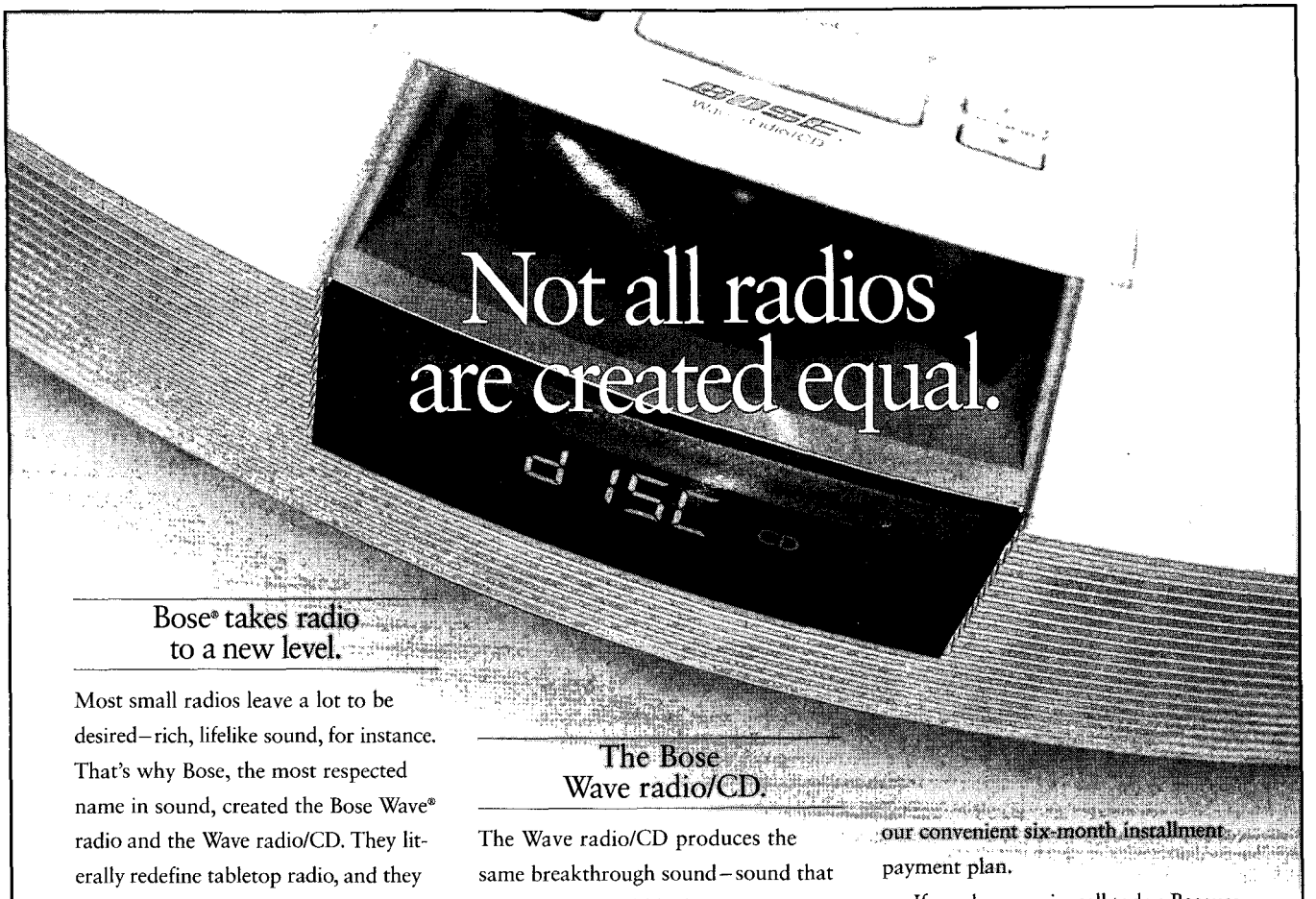
The danger of the Commerce Department's latest study on the "digital divide" between race and ethnic groups is that it comes from a credible source. People everywhere are quoting from it, although, as Adam Clayton Powell III pointed out ("Falling for the Gap," November), the study is deeply flawed. That the federal government would use such old data and pass it off as new is revealing—and sad.

Maria T. Padilla
Senior Reporter
Orlando Sentinel
Orlando, FL
mpadilla@orlandosentinel.com

CORRECTIONS

Ronald Bailey's article, "Warning: Bioethics May Be Hazardous to Your Health," (August/September 1999) erroneously attributed a report that recommended withholding a test for breast cancer genes to USC's Pacific Center for Health Policy and Ethics. While that report was released at a conference organized by the center, it was formulated by a Stanford University group. The Pacific Center did not participate in any way in formulating the guidelines on breast cancer screening, nor does it endorse the Stanford panel's conclusions. REASON regrets the error.

In "The Day They Came to Sue the Book," by David Kopel (August/September 1999), the name of a prison in Michigan was incorrectly stated. The correct name is the Southern Michigan Correctional Facility.



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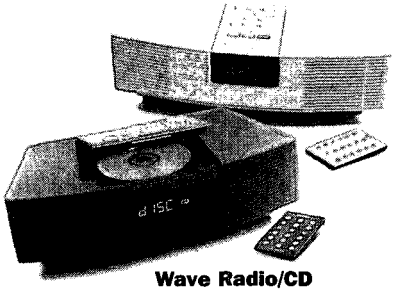

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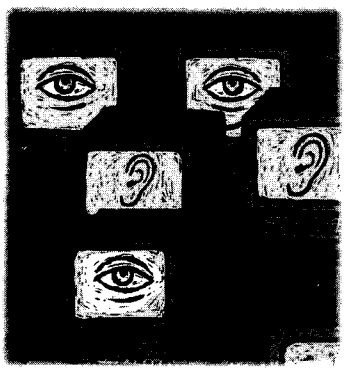
Project Echelon

By Jeff A. Taylor

For those joining the story late—like the vast majority of American media outlets—the National Security Agency's mysterious Echelon



surveillance program is finally getting a close look in Washington. This comes two years after a report for the European Parliament first claimed that "within Europe, all e-mail, telephone and fax communications are routinely intercepted by the United States National Security Agency." The report further alleged that Australia, New Zealand, Canada, and the United Kingdom regularly shared electronic surveillance data with the U.S.

The revelations attracted intense media interest in Australia, including a primetime TV report that teased out an admission from Australian officials that yes, Echelon existed. After that, the European report didn't seem so kooky.

In November, the American Civil Liberties Union launched a Web site, www.echelonwatch.org, dedicated to watching the watchmen. And in December the Electronic Privacy Information Center sued the NSA in an attempt to get a definitive answer to whether Echelon is used to monitor electronic communications within the United States. Of course, a clear "yes" would mean the NSA is violating the law.

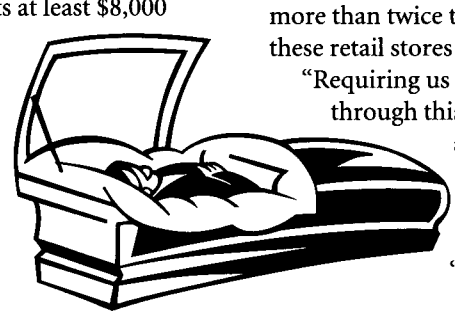
Now Congress seems serious about getting some answers about the program. In the past, the NSA has stiff-armed requests for information about Echelon. But Rep. Bob Barr (R-Ga.), a former federal prosecutor and CIA analyst, hasn't taken no for an answer. He plans to hold hearings on Echelon before the House Government Reform Committee this year. If they take place, they will be the first oversight hearings dealing with U.S. intelligence gathering since the Church Committee hearings 25 years ago.

Coffin Fit

By Ryan H. Sager

When Tommy Wilson and the Rev. Nathaniel Craigmiles started selling caskets at discount prices, they thought they were providing a service. To regulators, though, they were criminals.

Craigmiles/Wilson Casket Supply in Chattanooga never handles bodies; nor does it perform burials. Nonetheless, Tennessee law says it can't sell caskets from a retail location unless one of the proprietors becomes a licensed funeral director, a process that costs at least $8,000 and requires two years of training in running funerals and embalming.



The state has ordered the pair to stop selling caskets or risk criminal prosecution. Craigmiles, Wilson, and the owners of another casket store in Knoxville have responded by filing a suit in federal court. Represented by the D.C.-based Institute for Justice, the plaintiffs claim the law exists solely to protect a funeral home cartel that routinely sells caskets for more than twice the price these retail stores charge.

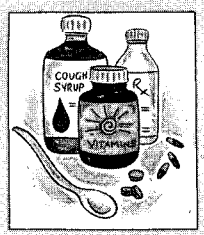
"Requiring us to go through this training," argues an incensed Craigmiles, "makes as much sense as requiring the [same from the] hearse driver or the person who sells the tombstone."

Balance Sheet

By Jeff A. Taylor

ASSETS

▲ Modern Pro-Meatiness. In the face of WTO protests in Seattle, President Clinton defends genetically modified foods. So-called Frankenfoods have Europeans up in arms, mostly because they are American and cheap. "I would never permit any pound of American food product to leave the country if it was unsafe," Clinton says. The Euros drop a demand for a "working group" on the issue.



▲ Health Bid. The Internet routes around medical supply choke points, as sites like Pharmabid (www. pharmabid.com) bring the auction site model to medical supplies. Small providers can now get blood products, vaccines, hormones, and syringes at rates previously available only to the big guys. Of course, the FDA worries that buyers will be duped.

▲ Diesel and Dust. Good ol' Standard & Poor's adds Yahoo! Inc. to its S&P 500 index. The Web portal replaces Laidlaw Inc., which runs school buses, the Greyhound bus line, and ambulances—not exactly a New Economy business model.

▲ Return Fire. Gun supporters launch a legal counterattack on the mayors of 23 cities sho have sued gun makers for damages. The Second Amendment Foundation accuses the mayors of conspiring to bankrupt and destroy the gun industry. The mayors claim to have arrived at the lawsuit idea independently. The Feds, though, sign on to the lawsuits.

▲ Film Noir. The FBI fails to disappear a Web-based Y2K-disaster spoof video. It tells the Michigan-based Web host of a six-minute film, a pretend peek inside plans for a race riot, to pull the movie lest his upstream provider nuke him. Mirror sites appear overnight for the film, which gets thousands of viewings thanks to the FBI attention.

Forging Protocols

By Charles Paul Freund

The last mystery surrounding the infamous anti-Semitic pamphlet *Protocols of the Learned Elders of Zion*—the identity of the 1904 hoax's author—finally has been solved. According to the Russian historian Mikhail Lepekhine, the *Protocols* were concocted by a Russian propagandist named Mathieu Golovinski as part of a monarchist scheme to persuade Czar Nicholas II that the

▼ Shrub Man. What do George W. Bush and Howard Stern have in common besides multi-million-dollar hype machines? Both use platinum-plated lawyers to go after bootstrap Web sites they don't like. For Stern it is a site devoted to his marital woes; for Bush it is satirical site which calls him a drug war hypocrite.

▼ Out Numbered. California manages to lose $1 billion to health care fraud because Medicaid ID numbers are handed out like AOL software. Just about anyone could start billing the system for bogus claims. So eager was the state to sign up "clients" that new ID numbers could be had by those who simply reapplied to the system.

▼ Chew Noise. The European Union bans plastic toys containing a chemical the E.U. frets might harm babies. Chemical softening agents called phthalates, often used in teethers or pacifiers, are the villains. Yet the agents have been in use for 40 years without any sign that they hurt infants.

▼ Gang Violins. A high school in Amherst, Massachusetts, abandons a production of *West Side Story* for fear that the tale of the Hispanic Sharks and Anglo Jets will offend someone. Playwright Arthur Laurents calls the decision "a slightly insane moment." Back in 1962 the Hollywood version of the musical story of cross-cultural forbidden love only pulled in 10 Oscars. Good thing the school didn't stage *Romeo and Juliet*.

▼ Brotherly Dove. As if North Korea didn't have enough problems, First Brother Roger Clinton adds his musical stylings to a concert in Pyongyang. Clinton joins South Korean teenage pop stars as part of the "2000 Peace and Friendship Concert." Rog helped belt out "Our Wish Is Unification."

LIABILITIES

capitalist modernization of Russia was really a Jewish plot to control the world. Golovinski's handiwork—24 subversive "protocols" that purport to be the minutes of a secret "Zionist" conclave—was to become a bulwark of anti-Semitic paranoia and an essential text of Nazism. The *Protocols* remain dear to credulous paranoids throughout the world.

Historian Lepekhine discovered Golovinski's authorship in Russia's long-closed archives and published his findings last November in the French newsweekly *L'Express*. Golovinski had been linked to the work before: The German writer Konrad Heiden identified him as an author of the *Protocols* in 1944.

The *Protocols* have been known to be a forgery since 1921, when *The Times* of London revealed that they had been largely copied from an 1864 political tract by a Frenchman, Maurice Joly. That work was a commentary on French politics and had nothing to do with Jews. Golovinski, working with such mystical anti-modernizers as the Holy Brotherhood, combined Joly's fantasy elements of world domination with earlier anti-Jewish and anti-Masonic material to produce "evidence" of an overarching Jewish-Masonic plot. Late-Imperial Russia was awash in documentary forgeries, domestic spying, and counterspying, with revolutionaries and the Czarist secret police often involved in complex duplicities. Golovinski himself changed sides after the 1917 revolution, becoming a Bolshevik propagandist.

Of course, a parallel universe of *Protocol*-believers has continued to claim that the *Protocols* are authentic, and that any evidence to the contrary is the real forgery. The leading proponent of this view was probably Nesta Webster, who wrote prolifically in the 1920s about purported Jewish conspiracies, and whose anti-revolutionary zeal may have stemmed from her belief that she had been guillotined by French revolutionaries in an earlier incarnation.

The *Protocols* remain widely sold in the Middle East, are readily available in Japan, and have lately become quite popular in the Balkans. In the U.S., reprints can be found in many Afrocentric bookstores. The *Protocols* were reprinted in their entirety in William Cooper's popular 1991 conspiracist work, *Behold a Pale Horse*, though Cooper instructed readers that "any reference to 'Jews' should be replaced with the word 'Illuminati.'"

Forfeiting Sense

By Jesse Walker

In 1996, some Missouri highway troopers stopped a speeding Volkswagen Golf. One thing led to another, and before long they were searching the car. When they found $24,000 in cash stored by the battery, they decided they were dealing with drug dealers and seized both the money and the vehicle. In early 1999, the latter was ▶

SOURCES

"There is an inherent risk of theft, misuse, and loss of drugs," reports the General Accounting Office in a November report, "Seized Drugs and Weapons" (available online at **www.gao.gov/new.items/ai00017.pdf**), that looks at how poorly the Drug Enforcement Administration, which seized more than 275,000 kilograms of illegal drugs in fiscal year 1998, kept track of such evidence. **The report suggests that some runny noses at the DEA may not simply be due to the common cold.** "Weaknesses related to DEA's accountability over drug... evidence...included (1) incomplete and missing drug evidence documentation, including chain of custody documentation, (2) inaccurate recordkeeping of...evidence, and (3) improper accounting for drug weights, **including unverified and unexplained weight differences in drug exhibits."**

"You may think you can write whatever you wish today. You may boast about your action because you defamed this or that person, but when we are dead and buried in our graves, we shall be together again."
—Ayatollah Mohammad Emami-Kashani, warning dissident Iranian journalists during a September sermon, quoted in Volume 3, No. 4 of the *Middle East Review of International Affairs* **(available online at www.biu.ac.il/SOC/besa/meria/)**

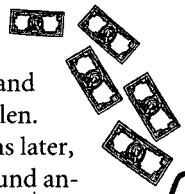
BRICKBATS

◆ If you're going to Santa Cruz, California, be sure to leave any bad feelings at the city line. A group is trying to get a motion on March's ballot to make the city a "hate free" zone. So if someone cuts you off in traffic or your barber gives you a bad haircut, you'll just have to smile.

◆ Other Golden State cities are trying to get rid of another nuisance: tobacco. The state now bans smoking in almost all public places, and some officials are trying to stamp it out in private ones as well. Local governments across the state are urging landlords to ban smoking in apartment buildings and are encouraging people to sue their landlords if the neighbors smoke. One suit has already been filed in Pasadena, where a woman claims a neighbor's fumes killed her dog.

◆ Clerical worker Beverly Lancaster knew just what to do when she felt her employer—the city of Birmingham, England—had mistreated her. She sued it, winning more than $100,000. What had the city done to incur her wrath? It had promoted her. Lancaster took the city to court because the new job left her filled with stress. She told her employers she didn't want the job, but they insisted on keeping her there, despite her claim that she didn't have the proper qualifications.

auctioned for $5,400 to Jeffrey Chappell and his mother Helen.



Two months later, a mechanic found another $82,000 hidden in the gas tank. He called the Drug Enforcement Administration, and the government took the money. The Chappells are taking the matter to court.

"I bought the car 'as is,'" Jeffrey explains, "and the law is very clear. If I had bought the car from a used car dealer, the money would be mine. It seems that the law applies to everyone except the government." What's more, if the authorities decide that the cash is drug money, the cops could seize the car, without compensation, yet again—even though no one suspects the Chappells of being involved in the drug trade.

Meanwhile, the original $24,000 seems to be lost in the bowels of the federal beast: No one's sure who has it. And the car's original owners? They were never charged with any crime and are free to this day.

Blind Profits

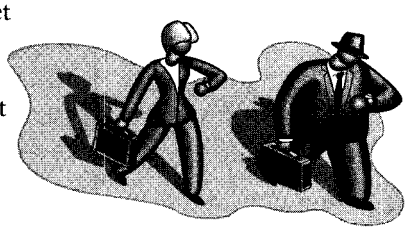
By Brian J. Taylor

Do markets undermine prejudice?

In his 1957 book *The Economics of Discrimination,* economist Gary Becker argued that free markets would reduce and eventually eliminate discrimination in the workplace. Firms must pay for their "taste for discrimination," the logic goes, by hiring more expensive white men over equally qualified women or minorities. The more competitive a market is, the more damage discrimination will do to the firm. The business that refuses to change its practices loses to competitors not willing to sacrifice their profits in the name of racial or gender solidarity.

Over the past two decades, the gap between men's and women's pay has indeed narrowed. While women in the labor force generally have more education and experience than before, that doesn't entirely account for the recent gains.

In "Importing Equality?" (available at www.ny.frb.org/rmaghome/staff_rp/sr74.html), a recent study for the Federal Reserve Bank of New York, economists Sandra E. Black and Elizabeth Brainerd tested Becker's theory in certain manufacturing sectors. In concentrated sectors, where a few large firms dominate the industry, women's pay has trailed that of men to a greater extent than in more competitive sectors of the economy, but as concen-



ARTIFACT

Muffled Morph

When the Indian to the left was young, he wasn't an Indian at all, and he held an automotive part in those colossal outstretched arms. He was a Muffler Man, a giant built in the early '60s to advertise a service station. The Muffler Men were mass-produced, but over the years they've started showing more individuality: Different businesses in different places have bought the things from their initial owners, giving them new clothes, new faces, new items to hold.

Roadside America, an online bestiary of the nation's unsung highway attractions, has devoted a special page (www.roadsideamerica.com/muffler) to recording the Men in their many avatars. Scan it, and you'll find reports of a Muffler Spaceman, a Muffler Frankenstein, a Muffler Pookah, and several Muffler Lumberjacks, at least one of which has had its head replaced with that of *Mad* mascot Alfred E. Neuman. You'll find a chart denoting the different species of Muffler Man and telling you in which towns each can be found. You'll even find a map of the country, with Muffler Man sightings marked for your traveling convenience.

There's a prominent school of thought that fears for the future of "difference," worrying that every local or eccentric variation will one day be swallowed by a creeping corporate monoculture. But to judge from the growing band of customized Colossuses—and every other mass commodity whose form and purpose has been adapted and changed—often as not it's those local and eccentric variations that are doing the co-opting. The fears of sameness may prove to be as oversized as the Muffler Men themselves.

—Jesse Walker

trated sectors were increasingly exposed to international trade (which acted as competition), the gender wage gap narrowed. They concluded that it was "increased globalization in the 1980s" that "forced employers to reduce costly discrimination against women and thus accounted for part of the 'unexplained' improvement in the gender pay gap."

While not exhaustive—manufacturing accounts for only about 15 percent of the economy—the study examined wages in both concentrated and competitive sectors. As Becker predicted, wage parity was closer in the more competitive markets.

Spare Parts

By James DeLong

On November 19, 1999, *The Washington Post* began a news story on organ transplant policy this way: "The Republican congressional leadership moved yesterday to derail a hard-won compromise with the Clinton administration aimed at developing a fairer system for organ transplants, outraging the White House and raising concerns that the plan could be delayed indefinitely."

You wouldn't guess it from the story, but this debate involves some serious issues of exquisite moral difficulty. What does "fair" mean in this context? Should the sickest recipients receive preference (as the administration wants), or should some other factor govern—perhaps "youngest first" or "otherwise healthiest" (to make sure that a scarce liver, say, goes to a child rather than a cirrhotic senator)? Are we better served by a few large transplant centers or by a network of smaller local ones? Will more people donate organs if transplant centers are local?

Perhaps the most interesting question does not even enter into the thinking of Congress, the administration, the Department of Health and Human Services, the medical profession, or the general press: Should individual donors or their families be allowed to establish the criteria for how their organs are disposed? (See "Organ Grinders," November 1998.) While living people are allowed to donate organs, such as kidneys, to specific individuals, this is not part of the system for allocating organs from cadavers. But if a question has no clear moral answer, perhaps people should be allowed to answer it for themselves rather than relying on the votes of the political class.

Fire Sign

By Jeff A. Taylor

In West Texas, a man's land is his only as long as he doesn't go posting signs telling passersby their constitutional rights.

Attorney Pat Barber was fed up with what he saw as excessive police searches of vehicles on Interstate 20 outside Colorado City, a small town (population 4,000) west of Abilene. So he built a 128-square-foot billboard telling motorists whizzing past his ranch to "Just Say No to Searches."

The sign also displayed a phone number to call for a recorded message detailing motorists' rights when the police stop them. Unless officers have probable cause to search the vehicle, they must ask the driver's permission. But motorists often do not know they have the right ▶

BRICKBATS

♦ The Miami-Dade County Aviation Department has banned *Cigar Aficionado* magazine from Miami International Airport newsstands. The department didn't object to the articles promoting smoking. It was peeved at a story arguing that it's time to repeal the embargo against Cuba. Just considering such a move seems to be taboo in Miami.

♦ Malaysia habitually bars or heavily edits films with nudity, sexual scenes, or other material that might offend fundamentalist Muslims. The latest movie to be banned is *Austin Powers: The Spy Who Shagged Me*. The picture's actual sexual content is fairly low, but its double entendres and innuendo were too much for censors.

♦ While prudes in the rest of our country are protesting rap music, video games, and Marilyn Manson, the Rev. Stan Craig has more quaint concerns. He was upset when '70s metal band Black Sabbath was booked at the Bi-Lo Center in Greenville, South Carolina. Where most people saw a bunch of middle-aged men trying to support their families, Craig saw a threat to Greenville's moral health. "I think they need to be censored," he said. In the future, moralists in Greenville might want to try banning Alice Cooper, the musical *Hair*, and public screenings of *Carnal Knowledge*.

Chip Bok

Rok
KEASON 99
I ROUNDED UP THE PEOPLE WHO WERE HURT BY MICROSOFT'S MONOPOLISTIC BEHAVIOR.
HURT DOESN'T BEGIN TO DESCRIBE IT. IT WAS LIKE WE WERE INVISIBLE. GATES COMPLETELY IGNORED US.
YEAH. NO FOOD. NO JUNKETS. NO DONATIONS.
PARTY BOSSES

to refuse such requests.

"The state police were stopping everything that moved in Mitchell County —it was like a roving roadblock," Barber, 53, told the *Odessa American*. "It also offends me when I see an innocent, frightened traveler standing on the side of the road with the police digging through their mini-van," added Barber, who spent 10 years as Mitchell County prosecutor.

The day the sign went up, county sheriff's deputies reported it to the Texas Department of Transportation. The state DOT, in an almost certain record time of four days, informed Barber that he was violating the state's 1972 Highway Beautification Act, an infraction carrying a fine of up to $1,000 a day.

The Texan took the matter to court, claiming First Amendment protection for his sign. In late October, a local judge ruled against him. Barber opted to take the sign down his own way—by setting it ablaze.

Now the sign is gone, but Barber plans to continue his fight to tell citizens about their rights. His Web site, www.patbarber.org, is full of testimonials from people thankful that someone wants to tell them to just say no.

So Much Art

By Charles Paul Freund

Newspapers tend to cover those arts that most of their readers actively use, according to a report by the National Arts Journalism Program at Columbia University. Of course, the report didn't put it that way. "Reporting the Arts," released in November, concluded that arts coverage was lagging behind a boom in cultural activities and was dominated by movies at the expense of such forms as dance and architecture. The report lamented that half the space that papers devote to the arts consists of events listings.

"If 50 percent of what [arts editors] are doing is listings," project co-director Michael Janeway told *The New York Times*, "what does that say about how much they have thought through what they are doing?" According to Janeway, "it's not journalism."

It's not gatekeeper journalism, to be more precise. But listings are apparently pretty useful to those readers who want to know what's going on culturally in their cities and who are satisfied to make their choices based on their own tastes and preferences, as opposed to relying on the tastes and recommen-

dations of critics.

Many daily urban newspapers expanded their cultural listings as a competitive move after "alternative" weeklies pioneered comprehensive listings in the 1970s and '80s and used them successfully to attract advertising from clubs and similar venues. In other words, the expansion of listings is a reader-led phenomenon. (Listings tailored to particular cities are now also available on the Internet.)

But the report's authors, perhaps distracted by the paucity of architecture criticism, buried their lead: that there has been an explosion of artistic activity across the nation, fueled by the healthy economy. The report studied arts coverage on network TV and in 15 newspapers in cities large and small (intentionally omitting both New York and Los Angeles). It concluded that the papers were failing to keep pace with the expanding arts sectors in their communities. Rather than grappling with the shrinking influence of the press in a wildly successful, consumer-driven arts economy, the report concluded that there is a gatekeeper shortage.

In Charlotte, North Carolina, for example, "despite phenomenal growth in almost every area of the arts, as well as surveys that show readers spend as much money on arts and entertainment offerings as sports, the arts staff has not increased," the report complains. For some people, it seems, the stage is always half-empty.

SOUNDBITE

Flip Your Whig

By Nick Gillespie

"Historians have long ignored the tradition of conservative politics in America—the development and shaping of a key set of principles and affectations that eventually led to political activism and the capture of a major political party," notes Gregory L. Schneider in his recent *Cadres For Conservatism: Young Americans for Freedom and the Rise of the Contemporary Right* (New York University Press). Schneider's highly readable and accessible study of YAF, the student group founded in 1960 by William F. Buckley, M. Stanton Evans, William Rusher, and other right-wing eminences, seeks to redress that imbalance. *Cadres for Conservatism* extends and enriches recent books, including John Andrew's *The Other Side of the Sixties* (1997), which similarly seek to explain the post-1960s swing to the right by exploring conservative goings-on in a decade mostly remembered for left-wing activism. Executive Editor Nick Gillespie spoke with Schneider, an assistant professor of history at Emporia State University in Kansas, via telephone.

Q: Why have historians ignored nonliberal traditions in American history and politics?
A: Partly because a Whig model of history still prevails: Historians tend to see everything as leading to the current moment of "triumph." Among contemporary American historians, the typical view is that everything leads to the buildup of the state and its grand solutions to social problems. The New Deal solved the problem of the Depression, goes this line of thought, and the Great Society solved the problem of poverty. Of course, they didn't. But they're seen as noble attempts to at least deal with those issues.
Q: You write that historians "are beginning to recover" conservative and other traditions. Why now?
A: For myself, I started with the question that if liberal history is correct, then how do you explain Ronald Reagan? I discovered that there is a conservative tradition, one that extends back at least as long as the one that brought about contemporary liberalism. But going to college in the 1980s, I never heard anything about it, never even heard about Barry Goldwater in the classroom. Reagan's rise was attributed to something like a conspiracy.
Q: What was YAF's biggest contribution to American politics?
A: It served the role of forming political cadres for conservative causes. For the most part, that activity was embodied by anticommunism, but it also included support of limited government and candidates like Reagan. YAF was the political wing of the conservative movement. It provided the staffers in the Reagan administration and influential people in a wide variety of other institutions and areas.

Y2Kaos

By Mariel Garza

Thanks to the Internet, the telling of urban legends has been recharged. Along with resurrected old favorites (e.g., rings of organ thieves, fingers in soft drink cans), we now have e-mail tall tales about underarm antiperspirants causing breast cancer, an endless parade of imaginary sick kids whose dying wish is that you forward their treacly messages to 15 people, and, of course, the specter of Y2K.

Amid the myriad computer-virus warnings, for example, was the Net rumor that the Russians would use the confusion around Y2K to launch a first-strike nuclear attack against the U.S. and then say, "Oops! It was an accident." Another warned that the Christian Rapture is scheduled for sometime in 2000, and all sinners should beware.

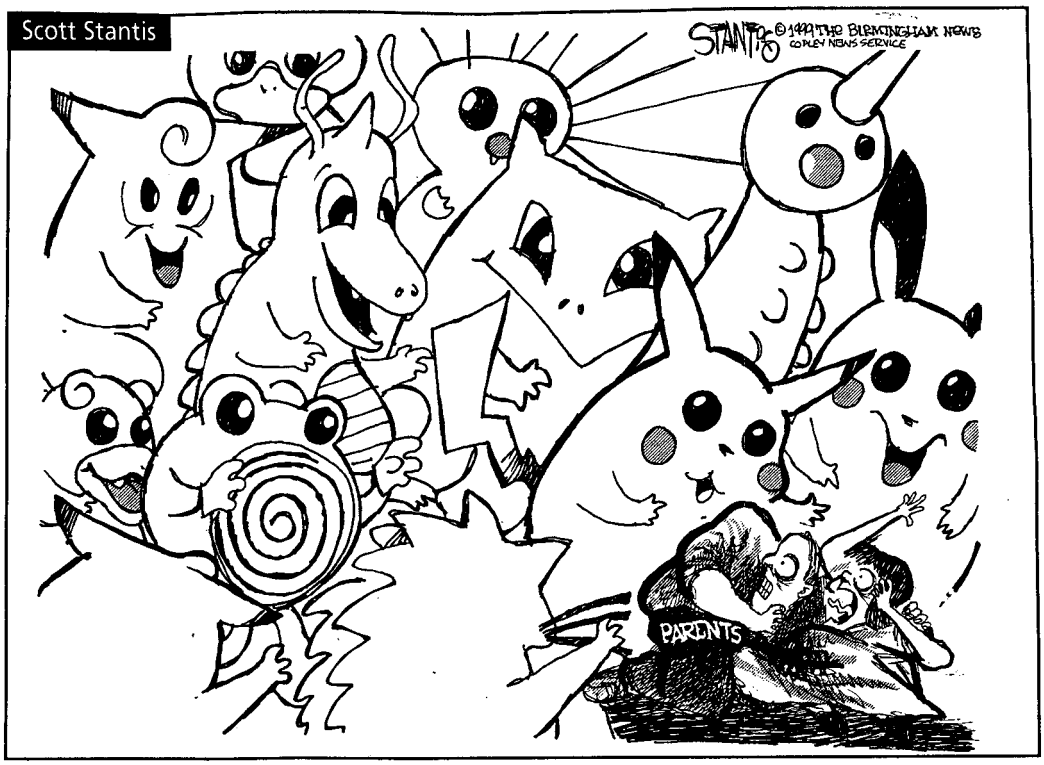
A persistent and popular rumor asserted that the government planned to impose martial law on January 1, whether or not the Y2K bug shut down systems, and that this was true because somebody's uncle or brother or dog had seen an undercover shipment of plastic road signs in a truck somewhere. Naturally, the first thing a government does when it imposes martial law is to put up road signs that say "No Civil Rights Past This Point." ▶

BRICKBATS

◆ Police in England have found a novel way to catch child abusers. They don't wait for complaints to come to them; they go looking for them. It's called trawling, and one police official admits it's "the reverse of normal police procedures." The process is simple: Officers go to residents or former residents of institutions for troubled teens and question them about their caretakers. Some 5,000 people, most of whom have never before been in trouble with the law, are now facing charges as a result. Many of the alleged crimes go back 10, 20, or 30 years. Trawling has its critics. "If police officers interview hundreds of damaged young people with long records of deception and dishonesty, with the aim of gathering allegations of abuse against those who once cared for them," observes *The New Statesman*, "it would be surprising if they did not succeed in provoking a large number of false allegations—particularly when it is known that such allegations can result in thousands of pounds being paid out" in compensation.

—Charles Oliver

Scott Stantis



But even if that rumor turns out to be fake, it doesn't mean it's time for easy breathing. According to another e-legend, if the Y2K bug didn't shut civilization down, the Feb2K bug will. That's because 2000 is supposed to be a "super" leap year. The "science" behind the super leap year is a bit dense, but it has something to do with a supposed accumulation of seconds over the past 400 years that will finally catch up to us and add not one but two extra days to the year. The effect on computers will, of course, be catastrophic, particularly to daybook planners, and the glitch will likely—no, certainly—launch nuclear missiles across the planet. ◆

25 YEARS AGO IN REASON

☛"An April 15, 1973, tape showed that Mr. Nixon said former presidential aide Charles W. Colson was 'up to his ass' in the scandal. The White House transcript, without disclosing the fact of any editing, quoted Mr. Nixon as saying Colson was 'up to his navel.' Well, even if Mr. Nixon and his aides prefer not to admit it, we certainly believe Colson was up to something." **—"Publisher's Notes"**

☛"Inflation will drive all the Western countries into a planned economy via price controls....People will find they can't live with constantly rising prices and will try to control it by price controls and that of course is the end of the market system and the end of the free political order." **—"Economics, Politics & Freedom: An Interview with F.A. Hayek"**

☛"In 1972 the American left tried...to portray George McGovern as a latter-day Joan of Arc...What happened, instead, was that St. George turned out to be a political prostitute of the lowest rank, a tarnished street walker with an uncanny talent for selling his soul to the highest bidder in the grand old tradition of smoke-filled rooms and clubhouse deals." **—Jerome Tuccille, "The Failure of the New Deal Coalition"**

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—F. A. Hayek

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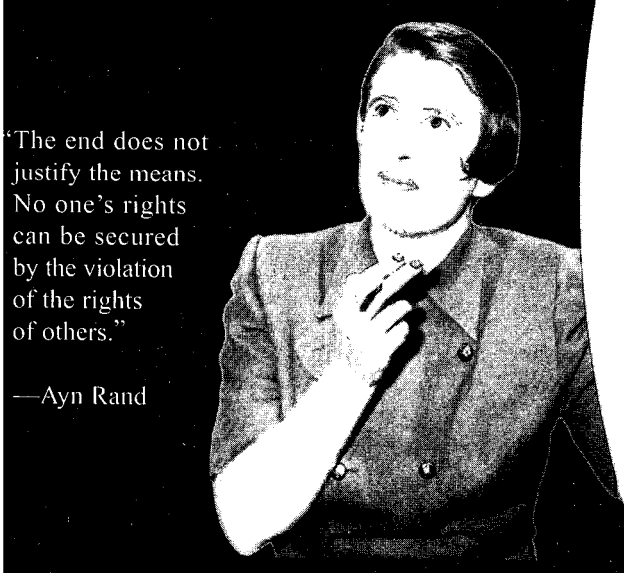

"The end does not justify the means. No one's rights can be secured by the violation of the rights of others."

—Ayn Rand

"The State is not armed with superior wit or honesty, but with superior physical strength. I was not born to be forced. I will breathe after my own fashion. Let us see who is strongest."

—Henry David Thoreau

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Kids' Beat

In which our man in Washington explores the constitutional status of video games, hears the declinist take on kids, and watches John McCain wow Yalies

By Michael W. Lynch

Date: Thurs, November 11, 1999
1:38:00 PM
From: mlynch@reasondc.org
Subj: Video Target

"I will know we have arrived when we get mentioned in your column," Rick Kaplar of the Media Institute said as I approached the registration table for lunch at the Four Seasons in Georgetown. The Media Institute concerns itself with the First Amendment and communications policy. One way it expresses its concern is by hosting a luncheon series, sponsored by such companies as America Online, CBS, Time Warner, and EchoStar Communications. Coincidentally, the executives of some of these very companies address the issues after a half an hour of wine and a hearty lunch.

Yesterday's featured speaker heads the trade group that represents manufacturers of video games—you know, those violent death simulators that turn your kids into killers. They've come under considerable scrutiny of late, as their products obviously poison souls and minds as surely as tobacco poisons lungs and hearts. This summer, President Clinton called on the Federal Trade Commission to investigate the industry's marketing practices, giving the ever-eager bureaucrats at the FTC full subpoena powers.

I sat down at a table back and center, joining a friendly assortment of the regulators, the regulated, and the trade press reporters who cover them. My table mate from the FTC has been working for the commission for 28 years and recently spent time scrutinizing the dietary supplement industry. He has now turned his attention to video games.

I asked him about a report that the FTC was having trouble finding staffers skilled enough to advance to the higher levels of the games they were supposed to be investigating. "Are you going to hire kids?" I asked, suggesting that such employees might put the agency in an ethical bind. If horrible violence, blood, guts, and perhaps a bit of animated cleavage spring forth at the games' higher levels, then the government would be responsible for corrupting kids. He assured me that the agency had younger adult staffers on the video teams, who I gather are skilled virtual killers.

Dessert arrived, and it was time for the keynote speech by Douglas Lowenstein, president of the Interactive Digital Software Association, a job he assumed after having been a reporter for nine years and serving as legislative director to former Sen. Howard Metzenbaum (D-Ohio).

Lowenstein had grave news for us. The media, with their penchant for sensationalism, shoddy sourcing, and desire for villains, are undermining the constitutional freedoms on which his industry depends. In the wake of Columbine, the companies who pay his hefty salary have found themselves under relentless and baseless attack. On show after show, Lowenstein said, a self-styled expert without a Ph.D. who founded something as ridiculous as the "Killology Institute" held forth on the dangers of video games. Interviewers treated his words as though they were revealed truth, even though he's never been published in peer-reviewed journals. Politicians introduced bills that would have (gasp!) heaped federal regulation on the video game industry—which obviously is just the sort of free speech our founders had in mind when they wrote the First Amendment. The public's been no help: "Alarmingly," Lowenstein said, "people seem willing to accept constitutional restrictions on the entertainment industry." Imagine! Next they won't be upset when the government tells them they can't smoke in buildings they own.

As Lowenstein rolled through his unabashedly self-serving speech—can you believe that his industry has been compared to the purveyors of cigarettes, instead of the sellers of books, who have constitutional rights?—I kept thinking: Welcome to the club. I waited for him to offer sympathy to the makers of such products as firearms, cigarettes, and automobiles, whose industries are bossed around by federal bureaucrats in nearly every aspect of their operations. He didn't. I wanted him to confess to similar abuses as a "powerful" Hill staffer. He didn't. He was totally focused on the that injustice he's experiencing. Poor baby.

I approached Lowenstein after the speech. First question: How are you different from the gun industry, which, after all, came under attack at the same time by the same forces? His answer: Everyone "from Bob Barr to Barney Frank" agrees that the entertainment industry enjoys First Amendment protections. Said Lowenstein, "That's not the same, clear-cut distinction you can make on guns." After these folks are done with you, I retorted, I'll be able to find scholars who will say you don't have constitutional protections.

The problem, Lowenstein argued, is that "a constitutionally protected industry like ours is put at risk—those protections are put at risk—by an industry [the news media] that itself enjoys those constitutional protections." He then went off record, feeling the urge to say something actually interesting. But I can't tell you about that.

HENRY PAYNE

Date: Tues, November 30, 1999
1:02:30 PM
From: mlynch@reasondc.org
Subj: Threats to Sanity

The sign at the door said, "Ten Critical Threats to America's Childrens" (sic): I would spend the next 45 minutes at the National Press Club listening to the ramblings of third-tier cheerleaders for more government spending.

Arnold Tanis, a pediatrician, had the most to say. He stood at the podium, his shoes collapsing on their inner heels, as he read haltingly from his prepared text. He fretted about parental responsibility: "No one wants to accept responsibility in this country."

He stressed the importance of teaching self-esteem. In the same voice I imagine he uses to calm the fears of his 2-year-old patients, he said every child, no matter how bereft of talent, has a reason to feel proud. "Look, you put on both shoes of the same color," he offered as a way adults could make a child feel good. For mothers, he noted, breast-feeding can be a source of pride. He ended his remarks by telling us we should heed the words of great Indian chiefs, including Chief Seattle, who is famous for something he never said. In the question period, Tanis said we should give children the vote.

It was so painfully obvious that the five speakers had no news to offer that by the time they shut up and opened the floor to questions they were met with skepticism that bordered on hostility. One guy challenged the claim that it's a dire sign that one in two children has access to guns. The questioner said he grew up with access to guns, used for killing deer, and that this posed not the slightest threat to the larger society.

Someone else questioned the complaint that one in five kids lives in a family receiving food stamps: Doesn't this show that we are already addressing the problem of hunger? Yet another fellow, obviously perturbed at having wasted his morning at this press conference, said that for almost every one of the 10 so-called threats, things are already getting better, not worse. He asked, reclining belligerently in his chair, if this didn't show that we are already on the right track.

In response, Tamara Lucas Copeland, president of the National Association of Child Advocates, allowed that there "were a number of positive [trends] that we didn't address." But, she added, "We can't let the positives overcrowd the negatives."

We certainly wouldn't want to do that.

Date: Thurs, December 9, 1999
6:28:43 AM
From: mlynch@reasondc.org
Subj: McCain Stumps in Bush Country

The room was poised for a maverick attack: Sen. John S. McCain (R-Ariz.) was bringing his presidential campaign to Yale's Silliman College, one of the school's 12 residential colleges, where he was scheduled to appear at a Master's Tea, an intimate gathering of 350 or so Yalies. Entering the building, I passed four Bush enthusiasts holding signs that read, "Bulldogs for Bush" and "Yale is Bush Country." Forty minutes before showtime, a long line was forming. I queued up, before recalling that the press doesn't wait in lines. I was soon settling into a second-row center seat.

A guy sitting in the front row sporting a fresh buzz cut was attempting to impress his friends by echoing the Bush spin that only a governor from a state that borders Mexico has the leadership abilities it takes to be president. "There's a definite learning curve" that a senator would have to climb, said Buzz Cut, deepening his voice for earnestness and swishing his hand up an invisible curve for effect.

Another guy three seats down had a different take. Presumably speaking of McCain, he said, "He's conservative, but he's not an idiot like Bush."

We had time to kill, and Buzz Cut was soon glad-handing the room in his weenie uniform, a light blue button-down Oxford shirt and khaki pants. The event's organizer asked an Alabama girl if she'd like to escort McCain into the room. Buzz Cut, now back in his seat, asked, "Can I come along?" No response. Buzz Cut leaned forward and begged, "Can I come along?" The organizer consented, and Buzz Cut leapt up and led Yale's nod to geographical diversity from the room.

The place was packed. Students sat Indian-style up front and stood packed solid to the farthest corners of the room. McCain arrived late, having stopped to address the overflow crowd of another 250 or so Yalies, who were stuck out in the cold. The room erupted in claps as the silver-haired saint entered. Buzz Cut, who had inexplicably returned earlier without McCain, jumped up, slapping his hands together madly.

After a brief introduction, McNasty, as he was known in high school, took the microphone and promised to keep his remarks short. There was a charge in the room, not unlike the vibe one feels when Clinton's around. I can't imagine that the majority of these folks are McCain boosters, or even Republicans, but it didn't take long for McCain to have them in his clutch.

He opened with his standard series of self-deprecating but deftly delivered, jokes. He told the one about how all senators, unless in detox or under indictment, consider themselves presidential candidates (a joke he should drop now that he has officially announced his candidacy). He informed the crowd that Arizona, which has produced Barry Goldwater, Morris Udall, and Bruce Babbitt, is the only state where mothers tell their kids they can't grow up to be president. He recalled the time when Jay Leno called his daughter just moments before McCain's appearance on the *Tonight Show*, and she accused Jay of being her pop pulling a prank. None of the jokes was new to me. Each was new to the crowd, and each earned laughs.

McCain customized his remarks for the younger crowd, claiming he was the only presidential candidate who attended the MTV Awards and therefore knew who Puff

McCain admitted he gets angry and promised to have a temper tantrum for us—because Congress engages in pork-barrel spending, military families are on food stamps, and the tax code is too long. I was getting pissed just listening to him.

Daddy was. McCain has a standard line, one that serves to lighten things up while reminding an audience of his five-and-a-half years as a prisoner of war in Vietnam: "[Fill in the blank]," the modest senator will say, "was the worst experience [or the most fun] I've had since Vietnam." Today McCain said listening to Nine Inch Nails was the worst assault on his senses since he'd been a POW. The students filled the room with claps and laughs.

McCain then launched into the college version of his stump speech. He told us he was running for president to restore faith in government for us young people. He admitted he gets angry, and he promised to have a temper tantrum for us, because Congress engages in pork-barrel spending, members of the military are on food stamps, and the tax code is too long. I was getting pissed just listening to him. Then he made it personal. "What am I worried about?" he asked, but a short walk from the classrooms where anti-ironist Jedediah Purdy earnestly studies law. "I'm worried that young people are cynical."

It was quite a performance, and thankfully one that lasted less than 10 minutes. Buzz Cut must have clapped a layer of skin off his hands and laughed himself hoarse. McCain opened the floor for questions. The first, a real zinger, was why he considered himself a proud, conservative Republican. He responded that he believes in lower taxes, less government, free trade, a strong national defense, and a minimal role for government in the lives of citizens, among other things I couldn't get down. He was asked a couple of campaign finance questions. Some liberals questioned him on gun control and welfare reform. A blond girl from Scottsdale, Arizona, wanted to him to detail his stance on ballistic missile defense. A guy in a U.S. Marine Corps' windbreaker asked him his views on the military. A woman with a large wooden crucifix hanging on a necklace asked him what he learned as a POW.

Yale's entire student body is composed of kids who sat in the front row in high school and excelled at asking questions, so the hands kept going up. Another blond girl asked McCain to describe the biggest challenge he faces on the road to the White House. "The $2 to $3 million Bush is raising while we have this meeting," he responded. He then quoted Mao, another McCain standard: "It's always darkest before it goes completely black." The master of Silliman College presented him with Dean Acheson's biography and a Yale shirt. Buzz Cut jumped up, disposable Kodak camera in hand, to get his picture taken with McCain. It didn't happen.

"He's awesome," I heard a student say as I left the room. Another piped up, "If I vote for a Republican, I will vote for him."

Buzz Cut was hanging around, still hoping to get a bit closer to the senator. I approached him for comment. "Funny, dynamic, spoke to kids well," Buzz Cut opined. "He comes off as being a man of morals, a real patriot." Buzz Cut's voting for Bush, however. Says he likes George W.'s defense and education policies better. Go figure.

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)erville, Ill. - My name is Jeff Paul. I'm 36 years old. My wife 'gy and I have 3 boys, all terrors. We live in a suburb of Chicago. **writing this article, sitting at my kitchen table in my boxer- rts and a T-shirt, where I have made an average of $4,000.00 a for the last 2 years, I have achieved the "fantasy" of making a of money from a home-based, easy, pleasant business.** I know story will be hard to believe. And it'll be even tougher for you to 'eve that you can do it too. But I hope you'll give me a chance. I may be the guy to change your life around in a big, big way.

IF YOU HAD TOLD ME 3 YEARS AGO BE WRITING ANYTHING LIKE THIS AND PUBLISHING IN A MAGAZINE, I'D HAVE LAUGHED IN YOUR FACE- BUT HERE I AM.

This is NOT "multi-level," NOT a deal where I show you how to rich by selling some book that tells other people how to get rich; IT a deal where you buy catalogs or products from me to resell, you money and I make money. Actually, this is NOT like anything you've ever seen advertised. And my story is true and I can prove eggy and I are real people. You may get to know us, even get our vate phone number and talk with us. Ours is NOT some "made up y."

MAKE MORE MONEY EACH DAY THAN MOST PEOPLE SWEAT FOR ALL MONTH LONG, COULD MY INCREDIBLE STORY LEAD YOU TO AN AMAZING INCOME TOO?

m a self-confessed opportunity junkie. For years, I bought books, es, kits, opportunities, distributorships and plans. Why? Because I a job I hated. Oh, it was a "good job," and we had a nice house, but I had to be away from home all the time, wear uncomfortable and ties, and I felt depressed, "stuck." I didn't want to wait until I 65 to have fun. I wanted to be home, go to Little League with my go fishing - so I was searching, always searching for an portunity."

Most of what I sent away for was useless. Silly. Insulting. Or too nplicated and difficult. Or required risking lots of money. I ember thinking then; if I ever actually stumbled across anything was 'real,' I'd tell the world. But I'm ahead of myself.

thought my job was lousy until I lost it. At the same time I was nping money into "mail-order ideas," trying to get a home-based ness going, my employer went out of business. Without that check, I was in big trouble quick. **You have to know how far wn I was when I made my "discovery," so you can see that body can do what I've done.** We had to move in with Peggy's er, live in their basement. We were one step away from homeless.

I managed to pile up $100,000.00 in debt on our credit cards, ng with my attempts at selling various things by mail.

went from a "young, bright, successful guy with a great job" to an barrassment to my family, a mooch to my friends. I sat in that ement, after Peggy and the kids went to sleep, on one hand feeling finding a bridge and jumping; on the other hand, more determined ever to find some way to make my "dream" of a successful, sle-free business of my own come true.

Now here's the unbelievable "punch line:" in just 2 years, I ded from the basement to buying a $385,000.00 house with half wn, no other debt, lots of dough in the bank, with a steady daily me of over $4,000.00 arriving here in the mail, over my FAX chine, and a little bit by phone. Peggy and I run the business. have one woman who comes here and helps us. Several ladies in neighborhood stuff envelopes for us in their homes. I have made "fantasy" REAL.

AFTER YEARS OF BUYING WORTHLESS "JUNK" FROM OPPORTUNITY MARKETERS, AND AFTER GOING 00,000.00 IN DEBT TRYING TO MAKE MY IDEAS WORK I FINALLY FOUND SOMEBODY WHO TOLD ME THE WHOLE TRUTH ABOUT MAKING MONEY WITH MAIL-ORDER AND DIRECT MARKETING.

After this REAL expert "tweaked" what I was doing - Well, let me back up for just a minute. It cost an incredible 495.00 to go to this guy's Seminar. Plus airplane tickets. And hotel. ad a little room left on my last good credit card, we borrowed some ney from friends, and we went. At the hotel, we didn't join the rs in the restaurant. We ate peanut butter and crackers for dinner. At his Seminar, this remarkable guy sat down with us, told us we e 90% of the way there with our product and idea, he made a few gestions, and sent us home. The month before, September, 1991, had taken in only $1,090.00. **Following his advice, our income oded like a fireworks display. Here are the numbers, olutely verifiable by my bank deposits: in October, we took in .400.00. In November: $26,200.00. December: $49,800. In 1992, ook in over ONE MILLION DOLLARS, and I kept about LF AS PURE PROFIT, after all my expenses.**

We run the business from a little 400-square foot office on top of garage. I have no fixed overhead and no employees to worry ut. *No joke, some mornings I've made over $1,000.00 while still* sitting around in my underwear, reading the paper, maybe talking on the phone with a customer - if I'm in the mood. I'm home for my kids. I bought a boat to go fishing on with my buddies. And it gets even better - wait until I tell you about "Auto-Pilot." But, first:

I DON'T EXPECT YOU TO BELIEVE A WORD OF WHAT I'M SAYING.

Shoot, Peggy and I still have to pinch ourselves, to be sure we're not dreaming. The few friends I've told have called me a liar. Our neighbors devoutly believe we won a lottery somewhere.

Well, I hope you know that I can't LIE in print like this. I could get in big trouble. So I've got all the records, the bank statements, my accountant, my diary, to PROVE everything I've said here is true. And I'm prepared to send PROOF to you, too.

Now, what about what YOU can do, and how I might help YOU? And, why would I? Well, I'm going to explain that, and make it all COMPLETELY RISK-FREE to you.

So, I continue; once taught the truth, the "underground secrets" about mail-order, I took off like a rocket. Now I've turned my business into a step-by-step SYSTEM that anybody of average intelligence can copy and use. So far, I've taught it only to about 20 people, in a little seminar I put together, where I charged them $795.00 to attend. I used these people as "guinea pigs," to be sure others could follow my System and make money just like I have.

IF I CAN REALLY SHOW YOU HOW TO MAKE $500, $1000 OR MORE BEFORE NOON EVERYDAY, WITHOUT LEAVING YOUR HOUSE - HOW MUCH SHOULD I CHARGE YOU FOR MY HELP? MAYBE A BIG, FAT "FRANCHISE FEE." NO, NOT EVEN CLOSE.

One couple went home and made $12,000.00 in 3 weeks. Another fellow took a simple product he'd been fooling around with and made $5,000.00 in just 19 days. Another is already making over $500.00 a day! So I guess I could do more seminars and charge $700, maybe more to teach this - but the last thing I want to do is WORK! **I've decided to reveal it all in a simple little book anybody can afford.**

WHY WOULD I SHARE ALL THIS WITH YOU? First, it takes nothing away from me to let you in on everything I've discovered. You see, each person applies my System differently, to different products and different markets. So I lose nothing by sharing. Second, Peggy and I are very grateful for the hand up we got - and he's said to us, "Don't thank me - give somebody else a hand up." As corny as it sounds, we're proof that the American Dream lives and **can be yours,** too. Remember, I know what it's like to be trapped in a depressing job. To be dead broke, scared, embarrassed. To see others do so much better and wonder: why them - not me? And to send away for opportunities," looking for help, but getting "trash." So I've decided to come into magazines like this with a very straightforward, FULLY GUARANTEED offer of real help, of a proven System, and see what happens. When I realized that many people could use my System and quickly create home-based incomes of $1,000.00 or more PER DAY, I got excited about teaching people how to do that.

I WILL GUARANTEE EVERYTHING. YOU BE THE JUDGE. I KNOW, IT'S HARD TO BELIEVE, BUT WHAT IF I'M RIGHT?

With my book, "How You Can Make $4,000.00 A Day Sitting At Your Kitchen Table in Your Underwear," you are PROTECTED BY MY SIMPLE GUARANTEE. And I would be an idiot to risk ruining my $200,000.00-A-MONTH business to steal pocket change from you. Wouldn't that be incredibly stupid? So, you have TWO FULL MONTHS to use my System. Anytime during those 2 months, IF YOU WANT A REFUND, YOU GET A REFUND. NO hassles, NO questions, NO screwing around.

By the way, Peggy HATES the title I've put on this book. She says that it's bad enough that I do sit around the house in my underwear, why tell anybody about it? I embarrass her. I'm a little "unpolished." When I do talk with a customer on the phone, I may be laying in a lounge chair, in my shorts, using a portable phone. I've even taken one call sitting on the commode. Well, I guess I just want you to understand that I'm just a plain, ordinary guy. A long suffering Cubs fan. A thrilled three-peat 'Da Bulls' fan. I don't golf; I bowl. I don't drink wine; I'm a Bud man. I have absolutely no special education, training, experience or qualifications likely to make me a success in direct marketing or mail-order. EVERYTHING I've done to go from dead-broke to making over 2-million dollars from home in 3 years, can be your "success blueprint" too.

WHAT WILL YOU DISCOVER? SOME OF THE THINGS I'LL REVEAL ABOUT HOW I MAKE $1,000.00 OR MORE BY NOON EVERYDAY, WITHOUT LEAVING MY HOUSE (OR EVEN WHILE SITTING ON MY BOAT).

- **How I Got Started With A Little $138.00 Ad - That Made $3,240.00**
- How To Follow My "Stepladder" Of Careful Re-Investment Of Profits (By the 3rd month, I took in over $50,000.00 from just $2,200.00 worth of advertising)
- THE "SECRET" PLACE TO ADVERTISE, where small ads produce giant response over **560 places to advertise** at dirt-cheap rates, virtually ignored by the entire mail-order industry. where you'll have little or no competition and rake in huge profits
- Why & How To Sell High-Priced, Big Profit Items: how I sell an item for $455.00 that costs me less than $40
- How to obtain THE PERFECT PRODUCTS for marketing with my System, without making any big investments
- The amazing "Triple Hoop" advertising secret that lets me keep using a small budget to get big results - so I can TAKE A LOT OF CASH OUT OF MY BUSINESS EVERY MONTH. You can too. (This year, I'm on schedule to TAKE $950,000.00 FOR MY FAMILY, to pay off my house, for vacations, for investments, for charities.)
- How to **"LIVE THE FANTASY"** -a home-based business that is worry-free, hassle-free
- The huge differences between my System and the tired, old, recycled, "unreal" 'plans' you keep seeing advertised
- How to start RIGHT NOW - **without leaving your job, with just a few hours a week**
- Get The Picture, You're At Home While Everybody Else Fights Traffic Going To...Work. The Mailman Arrives...Every Envelope You Open Has MONEY In It.

AND IT GETS EVEN BETTER - TWO ADDED BENEFITS THAT MAKE THIS THE ONLY HOME-BASED BUSINESS WORTH HAVING.

I've found the way to put my business on AUTO-PILOT. It virtually runs itself. We take days off, vacations, go fishing, goof off like crazy. And the money keeps flowing in. One person, who helps out (Jill - you may talk to her later) keeps everything on track. Next year, I'm taking the entire summer off! **I'll teach YOU how to quickly create a giant income, then, take the next big step to 'Auto-Pilot'.**

EVERY GOOD THING YOU'VE HEARD, EVERY GREAT FANTASY YOU'VE EVER HAD ABOUT MAIL-ORDER IS TRUE, BUT.

Yes, mail-order IS the best business in the world. BUT, and it's a big but, the "tricks" are to know what products to sell (and what products to avoid); where to advertise (and where not to); the honest truth about 800-numbers, 900-numbers, sales letters, ads, radio, TV, classifieds; what LIES are being sold - in other words, you have to be able to sort out the "right stuff." Well, there may be other ways to make a lot of money in mail-order, I can't say. But I can tell you that **MY SYSTEM lets you start as a "little guy," for small money, no risk, in your spare time, from home. MY SYSTEM contains THREE ENORMOUSLY IMPORTANT SECRETS (I've talked about one of them in this article) that can just about insure anybody's success.MY SYSTEM WORKS.**

LET'S WRAP THS UP:

I have perfected a very unusual Mail-Order Moneymaking System, the ideal home business, that gives me over $4,000.00 A DAY; that I really believe YOU can learn and use, too. I've described EVERYTHING in my book, and you can have your copy for just $29.97 - satisfaction absolutely guaranteed. This is, however, a limited time offer. I intend to raise the price of my book sometime soon. And to be totally, even "overboard" fair to everybody, I'm going to limit the number we sell this year. So, you need to respond now. TO ORDER WITH YOUR VISA, MASTERCARD, AMERICAN EXPRESS OR DISCOVER, CALL TOLL FREE TO 1-888-856-9454. She'll take your order and see that your book goes out to you immediately, along with my private phone number, proof of everything I've told you, and a lot more I haven't had room to tell you about. (Or mail your check or money-order for $29.95 plus $3.50 shipping/handling to: Art of Steel, Inc., 12407 Mo-Pac #100-289 Dept R2, Austin, TX 78758.) You can turn your back on me right now and ignore everything I've said - but why? Maybe my System can free you from money worries and day-to-day drudgery forever. Find out!

PS: WARNING: HILLARY & BILL CLINTON, AND ALL POLITICIANS HAVE BIG PLANS FOR YOUR HARD-EARNED MONEY.

Forget all the hooplah: the "rich" are NOT going to bear the burden of all the new taxes needed to cover Social Security shortfalls, health care, etc., etc. - it's the middle-class, middle-income 'wage slave' they have their sights set on. YOU are the target. The only real way to fight back is to make so darned much money that what you have left AFTER their damage is still fantastic. That's where I am. Of course, I cannot and do NOT guarantee you any certain amounts of profit or income. Individuals' results vary a lot. A whole lot of people get my information but never do anything with it, and I can't help that. But there ARE people just like you, following my instructions, and creating very big incomes. It's up to you. You can sit there and watch helplessly as Washington chews up your take home pay or you can chase after silly pie-in-the-sky, unproven get rich schemes or you can let me teach you a proven, truly practical way to jump up to such a huge income you can sit back and laugh at the politicians. Which is it going to be?

BURNING M

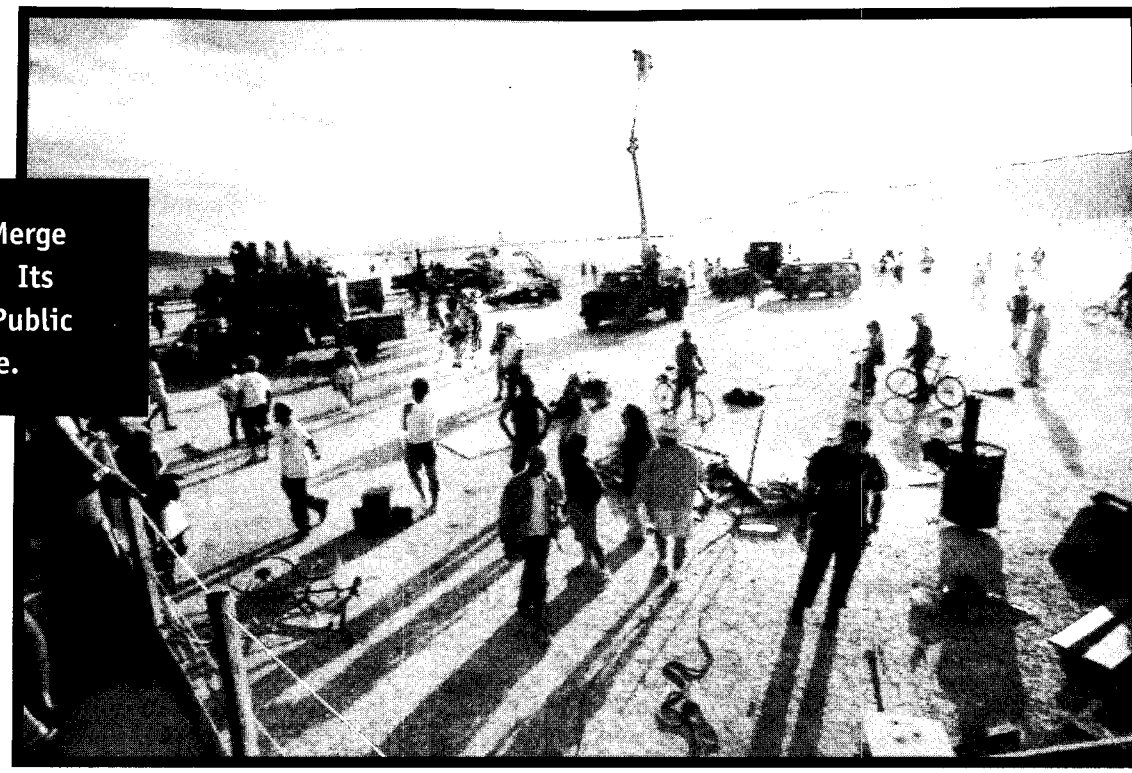
By Brian Doherty

AN GROWS UP

AP / WIDE WORLD PHOTO

Can the nation's premier underground event survive its own success?

It's the week before Labor Day, and you're on your way to a party held in the widest expanse of pure nothing in the lower United States—150 square miles of dry, cracked clay in Nevada's Black Rock Desert near the tumbleweed town of Gerlach. Since the event is taking place on land owned by the U.S. Bureau of Land Management (BLM), your hosts have had to pay for an official environmental assessment that objectively describes your destination: "The environment for the proposed action contains no true soils; surface or ground water; vegetation; wildlife; threatened or endangered species; wild horses; paleontology; solid or hazardous waste material; wilderness; or cultural re-



Work and Play Merge at Burning Man: Its Department of Public Works on parade.

sources." The most prominent words on your admission ticket read, "You voluntarily assume the risk of serious injury or death by attending."

So why are you—and some 24,000 other people—not simply resigned to attending this get-together but positively ecstatic at the prospect of spending the last week of summer in a hot, god-forsaken dry lake bed beset by unpredictable windstorms, flash floods, and bone-chilling drops in temperature after sunset?

It's because the party—perhaps better described as an art happening? an alternative community?—is Burning Man, the week-long festival held annually around Labor Day. Originated 13 years ago in San Francisco—it moved to Nevada in 1990—Burning Man has emerged as the media's favorite countercultural event of the '90s. *Wired* even dubbed it "the new national holiday" a few years back. Burning Man is a quintessentially freaky West Coast event, appealing mostly to a self-consciously underground group of artists, digerati, and tribally minded hipsters from California, Nevada, and the Pacific Northwest. For a week, these people descend on the desert and create a temporary metropolis—"Black Rock City," the sixth-largest city in Nevada for as long as the party lasts—filled with huge, elaborate, and often consciously absurd art projects, many of which are detonated, toppled, and burned by week's end. In the midst of the circular encampment stands the Burning Man itself, a 40-foot-tall blank neon-lit wooden effigy that will eventually be ignited before a tense, anxious crowd. All week long, say the faithful, there are friendly, fascinating people to meet, bizarrely beautiful and unexpected art to appreciate, all in an environment radically unlike the mundanity of everyday civilization.

There's a lot of cheery nihilism to the art and displays—despite the prevalent drum circles, it is by no means a hippie-dippy love fest. This year, for instance, Bay Area artist Robert Burke mounted a 25-foot-tall working lighthouse on a car, causing many people directional problems when the symbol of stable guidance turned out to be moving all night long. Also present were the likes of the Death Guild, who hosted an arena where people hitched into harnesses flew at each other in Mad Max/Thunderdome-style personal combat.

As the event has grown—attendance has increased about 50 percent each year—its nature has changed and its possible meanings have expanded. To many long-time attendees, the festival has turned away from its promise as what underground social theorist Hakim Bey calls a "temporary autonomous zone"—a place where a chosen few could create a new, free social order outside the purview of dominant authority. Now every step its organizers take embroils them with government, from the federal BLM to the counties of Pershing and Washoe (the festival site straddles the boundaries between the two) to the local Gerlach Community Improvement District. "I never wanted to encourage growth," says John Law, an early organizer who stopped participating in 1996. "By 1992, we were big enough. Three hundred people could have a great time and stay underneath the radar of authorities."

Certainly, Burning Man has changed from a truly anarchistic event—an anything-goes party of pyrotechnics and drive-by shooting ranges done off the grid, with no official approval sought and none granted—into a limited-liability corporation that charges admission and devotes a huge amount of resources to placating government agencies at all levels. These days, it must deal with as many as a dozen au-

JON ALLOWAY

thorities before it can open its gates. Instead of existing way, way off in the distance like some punk Brigadoon, Black Rock City is now bounded by Gerlach on one side and a road and railroad tracks on two others. Festival organizers themselves impose a set of rules that make Black Rock City less free than the surrounding playa: no open campfires, no tiki torches, no driving, no guns, no vending, no unregistered video cameras, no fireworks.

But the story is more complicated than a simple tale of unfettered liberty clashing with immovable and hidebound forces of government and social conformity. The agencies that sign off on Burning Man's permits have come to see the festival more as an opportunity than as a problem and have thus forged a relatively easygoing relationship with the openly danger- and drug-filled event. And Burning Man's gradual evolution of rules is more properly seen as an extended experiment in community building than as a case study in the suppression of liberty. To tour Burning Man is to get a sense of the promise of how spontaneous social orders develop and flourish—and how they can wither and die.

Burning Man began as a solstice celebration in summer 1986, when two best friends, Jerry James and Larry Harvey, a builder and a landscaper, whimsically decided to construct an approximately life-sized human effigy of spare wood scraps, take it to San Francisco's Baker Beach with a handful of friends, douse it with gasoline, and set it on fire. Strangely moved by the experience, they decided to do it again the next year. Word spread, largely through a group of seekers of outré experiences known as the San Francisco Cacophony Society, which discovered the event two years after its founding. By 1990 the Burning Man figure had grown to 40 feet and the crowd to 800 people.

When a couple of cops told James and Harvey that they couldn't burn such a giant structure on a public beach, they dejectedly trudged off with the Burning Man's pieces. The Man was stored in a parking lot, where persons unknown chopped him up and hauled him away. Cacophonist John Law had visions of the strange anti-oasis of Black Rock, which he had previously visited. The Man was frantically rebuilt in the workshop of the sign company where Law worked. On Labor Day weekend, approximately 100 people made a "Cacophony Zone Trip" (the Cacophony Society's term for out-of-town group excursions) to the Nevada desert. The Burning Man had found a new home.

And some new friends. When it came time for the 1991 festival, organizers again made no attempt to discuss their plans with any government entity. "I got a phone call from the BLM a few days before heading out for the event," recalls John Law. "I was horrified. I was all geared up and ready to go, had already rented a truck. I'd already started down the long path of destroying my credit card renting stuff for Burning Man," he laughs. By the end of a two-hour talk, Law had convinced the BLM man to fax him a temporary use permit requiring no fees or government oversight. Afterwards the BLM found, according to its report, "no trace of the burning ceremony or the camp site."

Over time, the event took up more time and money, and the organizers began to charge admission to defray expenses. In 1994 the three men who spent the most money and effort on Burning Man—co-originator Larry Harvey, Cacophony Society member John Law, and another Cacophonist named Michael Michael—formed an LLC to own and operate the event. (With Law gone, a new six-person LLC runs the event.) Out of necessity, things have continued to become more structured, mainly because of all the negotiating with nearly a dozen government entities.

The arduous and sometimes arbitrary process of getting all the necessary permits begins as the previous year's festival ends. The BLM is the ultimate permitter—but they keep all local government entities happy by enforcing their demands. This year organizers didn't yet have a BLM permit two weeks before the event began—which was also two weeks *after* Burning Man's "Department of Public Works" had begun grading roads at Black Rock, putting up perimeter fences, and building structures.

"Until we get the permits, they can always keep nudging us," Burning Man's press and government liaison Marian Goodell, a cheery but fiery former Web designer for Ford Motor Co., tells me in a coffee shop in San Francisco's Mission District two weeks before the event. "'Do this, do that, now how about this?' It's hard to comply when they don't give you a list saying, 'Here are 10 things you must do before getting a permit.' Instead, we get five sets of two demands [each] along the way. I got really frustrated last week when they called to say they needed another $15,000 check. 'So what? What are you gonna do?' I told them. 'There are 15,000 people back in the city building these monstrous floats and whatever, and they are coming out here, so just

"Try to live without commerce," event organizer Larry Harvey tells me. "Good luck. You'll be dead in a week."

process the permit!' Am I threatening them? No, it's just the facts."

Larry Harvey, the co-founder who is still the event's lead organizer, agrees that Burning Man's very inevitability—the event is advertised around the world on the Internet and tickets are sold long before permits are issued—makes it easier for the government to drag its feet. "They know it'll happen anyway, so why do anything?" Harvey says. "It never pays a bureaucrat to actually *do* anything. Then he has something to lose. Let's protect ourselves some more, is their attitude. What else can we insure? they wonder. 'If I'm working on their paperwork and fall out of bed one night, is that Burning Man's fault?'"

"I'd love to get to the point where there are no more public meetings," Harvey says. He and Goodell spend too much of their lives traveling back and forth to Reno, the Washoe County seat, to attend them. "They are all carbon copies of each other. The same general support, the same plan, and the same five people bitching who never listen to anything you say anyway. We don't need public meetings to talk to Gerlach, because we have a presence there. They are the only people immediately impacted anyway."

Still, Burning Man's relationship with government is in a golden age compared to years past. In 1997, when Burning Man was temporarily moved off federal land to a smaller nearby site on private land in Washoe, the county didn't sign off until mere hours before the event's official opening. Then it stationed sheriffs at the gate to confiscate every penny of ticket money to apply to the more than $300,000 in fees the county charged the organizers (the county returned a little more than $50,000 later, after admitting it had overestimated its costs). But after the 1999 gathering, Washoe County Commissioner Joanne Bond reports, she received almost none of the complaining calls about Burning Man she has become accustomed to. No government official seems willing to criticize the event on the record. That's probably because it's an economic boon for northern Nevada. In addition to the tourist dollars spent by tens of thousands of attendees passing through, about $150,000 goes from Burning Man directly into government coffers in the area.

And if the planned shift from cost-recovery to a $4 per person per day BLM fee comes true next year, the government will be even happier. In that case, the local BLM can expect to collect nearly half a million dollars from Burning Man. "They can build the Larry Harvey Visitors Center," Goodell marvels. "They'll all be drinking the finest Colombian coffee and gold-plating their shoes."

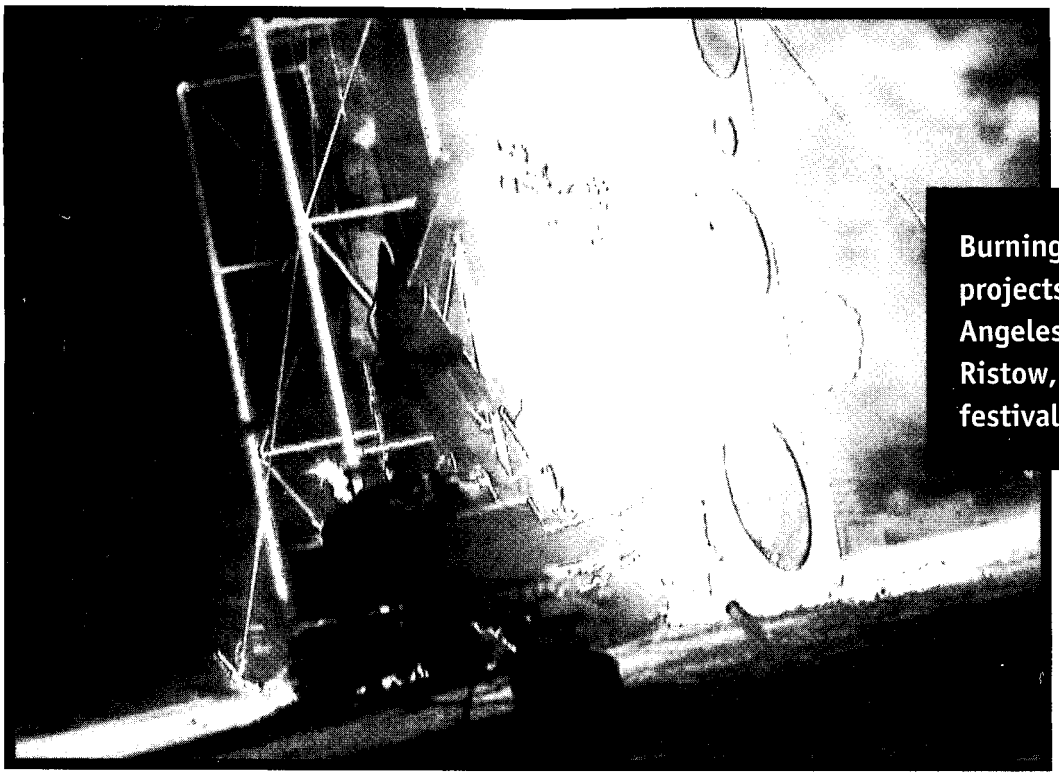
Indeed, the various governments involved seem happy to be getting the money, especially as long as they can report back to their constituents that, no matter how bizarre the event's nude techno-freaks, fire artists, and ravers might seem, it's all really quite innocent fun, no one gets seriously hurt, and the celebrants clean up after themselves. On the last point, in particular, Burning Man and the BLM are completely in synch, each advocating a "leave no trace" philosophy (an official cleanup crew stays behind after the festival's close to make sure nothing remains on the site). Barring any major fatal disaster, Burning Man's future in northern Nevada seems bright. The only cloud on the horizon is a still-inchoate plan from Nevada's senatorial delegation to turn the Black Rock Desert into a national conservation area that might preclude the festival. But, says Harvey, "Everyone's got to understand that we can't float their budget and everyone else's budget. This goose is not gonna lay that many golden eggs."

Burning Man is still in theory dedicated to both "radical self-expression" and "community"—two things that governments and their rules aren't necessarily best at furthering. To Harvey, Burning Man is more than just a party. But he's vague about exactly what it represents. Harvey talks a lot about the meaning of the event—the word *sacred* comes up often—and he once wrote an article in the neo-mystic magazine *Gnosis* in which he compared Burning Man to Rome's ancient mystery religions. But it's hard to be sure what he wants to come out of the event. In fact, he's proud that the event's central symbol—the Man—is enigmatic. "We never say what the Man means," he points out. "He's just there to provide a unified focus for the community. It could become a wonderfully coercive tool politically—like, 'The Man doesn't like that, the Man says...'" We could make The Man *The Man*, right? But he stands beyond the social circle, like a god or the prospect of war, something that unifies everyone."

The Burning Man community does have several unambiguous rules, such as "no spectators" (everyone is supposed to be a participant who adds to the event's ambiance, not mindlessly gawking at other people's flesh, flash, or efforts). More important, there's no vending. It's not that Harvey is inherently anti-commerce. He's a committed urbanite and modern who recognizes that exchange is central to human society. "Try to live without commerce," he tells me. "Good luck. You'll be dead in a week."

Indeed, despite its no vending rule, Burning Man survives off the cornucopiac excess of its participants' daily lives. It's precisely the money they make elsewhere that provides them with the time and resources they need to survive their week in the desert, to build a temporary, explosively colorful, and varied Shangri-La far from home. Black Rock City has no flowing water and no plumbing. Its citizens make do with portable toilets (at Black Rock's highest population, 97 people per), a service provided by the organizers and paid for through the $65 to $135 ticket price (tickets are cheaper the earlier you buy them). There's no electricity either, except from personal generators and an official generator that can be tapped only with the organizers' permission.

Black Rock City is perhaps no more dependent on outside sustenance than any other big city, but the "no vending" rule makes all the difference. Everything you need you must bring with you, or convince someone else to share with you—making, as Harvey suggests, one week about the



Burning Sensation: Fiery art projects, like this one by Los Angeles–based artist Christian Ristow, characterize the festival.

event's realistic limit.

In certain ways, Black Rock City is the anarcho-capitalism of economist Murray Rothbard's dreams (and, given his thoroughgoing cultural conservatism, nightmares)—only without the capitalism. Burning Man confirms that Rothbard's central notion that we could buy all the government we need on the open market has some validity. Burning Man charges its "citizens" an admission price and provides them, within the limits of the environment, the quasi-governmental amenities of plumbing and power, and the trappings of order and justice. It purchases all its other services, such as fire protection and medical services, from private and public agencies. Sure, the governments have more bargaining power than in a typical market. After all, if Burning Man refuses to pay the prices they demand for the services they insist on providing, they could probably prohibit the event. Still, everything about the infrastructure of Burning Man comes from market transactions, even if skewed by government power.

The real sticking point of most anarchist theorizing is law enforcement, and Burning Man is still working out the details on that score. The festival has a volunteer community of enforcement personnel, known as the Black Rock Rangers. Michael Michael (a.k.a. "Danger Ranger"), an original member of the partnership running Burning Man, is the linchpin and spiritual guide to the Rangers. Certainly, he is not your average beat cop.

As we talk in the front seat of a wrecked '82 Honda two weeks before this year's festival, stacked atop another junked car at Ace Auto Yard (the favorite junkyard for San Francisco machine artists), he tells me that Burning Man is a "cosmic cybernetic pulse engine. We prime it with information and it goes around the planet and people are drawn to it, and come out and build all this stuff within a few days and it explodes in a tremendous frenzy. It's an engine primed by information, fueled by experience, with a deep, annual pulse cycle. Burning Man has the ability to change the world, the ability to teach people a new way of not just surviving but thriving."

The enforcement of law—or "community standards," as the organizers would have it—at Burning Man is different from what you're likely to find elsewhere in the country. But it is not, despite the party atmosphere and the stated ethos of "radical self-expression," anarchy. Real cops—from Washoe County mostly—patrol Black Rock City alongside the Rangers, though the former rarely act without consulting the latter.

That's not to say it's your typical city, either. Consider one incident from this year's festival. A young woman rushes from her camp to challenge two Washoe County cops with a pump-action water rifle. She fails to get a good shot off. A cop taunts her gently, reminding her that she neglected to pump properly. Their authority so mocked, with what looks like a real weapon aimed at them, the police cruise on. In many municipalities such recklessness would get you shot. Here, the cops just keep driving slowly by the parade of nude, body-painted bike riders and the long promenades of elaborately designed and constructed theme camps featuring such compellingly mysterious and silly names as Temple of the Burning Question, the Tactile Portal, and Tic Toc Town.

JON ALLOWAY

This year, there were only seven arrests at Burning Man, one for trespassing (a truculent would-be gate crasher), one for assault, one for weapons possession, and the rest for drug sales. Burning Man officials stand by these drug arrests by stressing that they violate the community's "no vending" rule.

Lt. Will McHardy was in charge of Washoe County's police contingent at the festival. He tells me that for a couple of days the medical tent was seeing 80 or 90 drug-related cases a day. "Just because the incidents we became involved in were few, doesn't mean there weren't other problems we don't know about," he says. "There are lots of law violations out here. We're well aware there's an enormous amount of personal drug use taking place. We're concerned with people dealing in large quantities. Keep in mind, we're not out here to invade anyone's privacy."

No one wants to say it flat-out, but a policy of looking the other way—or, as Michael Michael puts it, "respecting Black Rock's community mores"—seems in effect regarding drugs, lewdness, and indecent exposure. That won't sound good to either the media or concerned constituents in the counties, so it is left unsaid. When I begin asking a county sheriff about the possibility of an official "see no evil" policy, he cuts me off before the heresy is even fully out of my lips. All laws of the county are enforced to the fullest, he insists. Drug wars demand not only casualties but hypocrisy. Still, to inculcate relaxed policing in a place overbrimming with illegal drug use is an accomplishment. Perhaps Burning Man *is* changing the world.

"We are giving people an opportunity to play the role of hero, not the role of policeman," Michael Michael says of his Rangers. "I want them to think whether there's a real reason for telling a person to stop doing something, not just something programmed from outside society. Like if you see someone burning a car...is it their car? Well, you can't burn someone else's car without their permission. But if it is [the person's own car], you need to remind them that they will be responsible for cleaning up the mess. But sure, they can burn their car."

During the required training for the all-volunteer force (160-strong this year), the trainees all must yell en masse, "We are not cops!" And mostly, they don't act like them. They patrol, they help people who ask for help, they talk to each other on radios, and only sometimes do they administer frontier justice. For instance, driving within Black Rock City is prohibited, except for official vehicles and registered "art cars." The art cars are the colorfully decorated vehicles that are small enough in number and rich enough in charm —this year, they included a mobile living room and a car topped with a rebar buffalo sculpture—that they are allowed to move around. When Michael found someone driving illegally, he summarily emptied the car's tires of air, leaving the immobilized vehicle sitting in the middle of nowhere. Michael added a sign to strike fear into others who might think of violating community mores: "Air pressure is a privilege, not a right—Danger Ranger."

This year's biggest confrontation involved an entire group of revelers. Calling themselves Capitalist Pig Camp, they tested the limits of what Larry Harvey calls "the place on earth where the First Amendment is most fully exercised." Doing what they insisted was an art project, the campers shouted racial slurs willy-nilly and sexual come-ons to prepubescent girls. They were inspiring fellow campers to potential violence, explains Duane Hoover (a.k.a. "Ranger Big Bear"). By Wednesday morning of the week, they had been ejected.

Shockingly Normal?: "If [Burning Man] just becomes San Francisco east, why not stay home?" asks one of the event's co-founders.

JON ALLOWAY

Given the Rangers' general effectiveness, I ask both Michael Michael and Hoover if Black Rock could survive without the official men with guns. "I wish I could answer this question differently, but no," Hoover says. "If someone's attacking someone with a frying pan [an actual occurrence], I don't want to have to get a bigger frying pan to stop them." When violence erupts, he wants pros with guns behind him. The minuscule number of times the cops have to act isn't necessarily a true indication of their use, he figures. Their very presence is a deterrent.

Michael believes fervently in the power of an internalized community ethos and wishes that the Rangers' usually gentle persuasion and advice would suffice to maintain order. But he too grants that there are some even in Black Rock who just don't understand that they can live and let live in harmony without guns coming into play. For such people, he says, the outside authority of the cops, not the authority of right reason and communal harmony, is all they'll recognize.

Are the restrictions to which the dissidents object signs that Black Rock City is becoming too much like the actual hometowns of its citizens? "If it just becomes San Francisco East, why not stay home?" asks co-founder Jerry James, who still attends the event but is not part of the organizing partnership. "It's more like a typical urban experience. It's not the social experiment it used to be. Larry talks about building community—what I see them building is just like the community we live with every day, all these cops and rangers and rules and roads."

Just how much Burning Man can change and still be the vibrant "social experiment" Larry Harvey wants is a question that will be answered over the coming years. The event's evolution takes place via a sort of Lamarckian process. Every year the site is literally wiped clean so that, ideally, no sign of its having been there remains. But each time the city is rebuilt, it seems to have a slightly more complicated set of rules and mores based on some previous experience.

"Jesse Helms should loves us," Harvey declares. "We don't drink at the public trough and we support artists with our own money. In fact, we fill the public trough with tens of thousands of dollars."

With all its ever-increasing rules, Burning Man is not the cacophonous event of years gone by, though representatives of the Portland, Oregon, and Los Angeles branches of the Cacophony Society attended in 1999. The L.A. group returned after a two-year absence, bridling at new rules restricting the unsupervised use of pyrotechnics in art projects. The Portland group's anarchic, snarky energy is less suited to the festival than it once was. The real cops quickly put the kibosh on their routine of wandering around in postal uniforms with unloaded, but real, guns as the "Disgruntled Postal Workers."

After that cease-and-desist order, the Portland contingent turned its energy to pranking the festival itself, staging a bogus "Larry Harvey" book signing in center camp. One of their number donned a fedora and stuck a cigarette in his mouth—Harvey's signature accessories—and sat on a couch on the mobile living room art car. Supplicants were forced to kneel at gunpoint before "Larry" as he signed cheap, thrift-store paperbacks with xeroxed cover stickers identifying the book as *Mein Camp*, by Larry Harvey. "Do not touch Mr. Harvey, do not speak to Mr. Harvey, do not look at Mr. Harvey," a gunman shouted through a megaphone. "Move along."

Every step away from pure anarchy is defended by Harvey in sensible terms. Guns were banned, he explains, as a pure matter of public safety. They might be fun among a few dozen friends, but with thousands all around you, there's no safe recreational use for them. Same for cars, he says. Pure survival at stake. Dogs weren't banned, but he decided that if someone thought his dog just *had* to be there, he should pay full ticket price for it. "We just couldn't handle a thousand dogs with kerchiefs running around being groovy," says Harvey. Building roads and giving campers addresses? Well, emergency services need to know how to find someone. With so many people, "You can't just say, 'It's the yellow tent behind the red car behind the giant dog head.'" The tiki torch ban was the result of an incident in which a Burning Man staffer set his camp on fire before the gates opened in 1998. Campfires? Their prohibition is certainly a loss to community—what is more inviting to camaraderie among strangers than a warm fire to circle around on a cold night? But with such a dense population, unrestricted open flames are just not prudent.

Typically, changes and new rules are pragmatic reactions to size, circumstances, and sometimes official demands. This year, for instance, the organizers were being pressured by county health officials to institute daily garbage collection, perhaps the final urban amenity. "You have no idea how fucked up that would be," Goodell, the Burning Man government liaison, moans. "It would no longer be a radical

camping experience. We might as well stay home and put the recycling in front. Larry says, 'Over my dead body will we do garbage service.'" As a compromise, however, the organizers did place giant dumpsters at the exit for attendees to put garbage in—a turn away from past years' policy that each camper must take responsibility for "leaving no trace." Perhaps daily garbage collection is only a year or so away.

While granting that things have changed, Harvey is weary of talk of the good old days—that the event is too big, that it's no fun any more because of all the rules, that it was better when it was more exclusive and anyone could do anything they wanted. "The exercise of liberty in Black Rock is remarkable, but we don't accept anti-social activity and we never have," he says.

"I do agree with the basic anarchist idea that culture is self-regulating and spontaneously would provide society with useful customs to regulate the relationship of the individual to the collective," Harvey says. "But I don't like nouveau anarchists who are basically selfish hooligans whose creed is, 'I do whatever I want, whenever I want, and I don't care, and I hang out with cool people who do anything they want to, and there are only a few of us, and fuck you.' How charming."

"It's a funny thing about small communities," Harvey tells me, mulling over arguments about whether the early days of Burning Man were better. "When it's smaller it's easier to keep order without outside authority, right? *Maybe.* But I remember one early year a guy shot off his gun without warning right next to [Burning Man's construction supervisor], who then couldn't hear for two days. If a stranger did that, you'd consider stringing him up. But in a small group, it's 'one of your own' and you don't do anything. Things fall between the cracks when you rely on coolness and implicit convention."

There is an almost cult-like aspect to Burning Man, though the event's vibe is such an amalgam of earnestness and silliness that it's hard to know how seriously even the seemingly serious ones take it. Inside Burning Man's office in Gerlach—steady, friendly contact with the locals is seen as key to the event's political survival—images of Larry Harvey as the Christian/Darwin fish can be seen. The 23rd Psalm is parodied with Larry as the Lord.

Harvey, like his partner Michael Michael, has declared that his intention is to change the world. But change it to what? A giant party filled with postmodern art projects? Something that gets destroyed, cleaned up, and rebuilt every month?

Whether he's an enthusiastic booster of radical inclusivity for a beautiful, life-changing experience or an egomaniac trying to build the largest event he can—both opinions circulate—Harvey remains dedicated to making Burning Man bigger and bigger. He seems to think 1 million people could enjoy the Burning Man experience; Michael, more visionary yet, sees 2 million as a good number to shoot for. The more down-to-earth Marian Goodell suggests 50,000—and only if she can get 10 reliable assistants.

If and when any of those figures are reached, perhaps it will be clear whether the festival amounts to something more than proof that people with enough disposable income can recreate the more bohemian neighborhoods of their big-city homes in the middle of a desert. Clearly the trend in Black Rock City over the past several years has been to make it more like the civilization left behind.

But this much is certain: Burning Man can never be like a "real" city unless the ban on commerce is lifted. That is the law that the organizers seem most adamant about maintaining—even though it is violated by their own Center Camp café (the proceeds go to various causes in Gerlach). At this point, Black Rock is a city dedicated to pure play, a prototype for the society Michael Michael speculates will exist when we've solved the problem of production and have nothing to do but enjoy leisure. If science-fictional nanotechnology dreams come true, then Burning Man's 24-hour Mardi Gras–like atmosphere of sensuality and creativity may have more relevance to more lives than we could ever guess.

As it is, people do work at Burning Man, and work remarkably hard, building ephemeral things for the joy of creation, for the fulfillment of teaming with others to pull off the grand gesture, for status and bragging rights in a temporary community. It's a pre-individualist vision of the good life, which in Black Rock is found only in working with and contributing to the polis. No one does anything in Black Rock for money, although the Burning Man organization does give thousands of dollars in grants to artists. "Jesse Helms should love us," Harvey declares. "We don't drink at the public trough, and we support artists with our own, non-tax-deductible money. In fact, we fill the public trough with tens of thousands of dollars."

Of course, most of the art probably wouldn't be to Senator Helms' taste. Consider, for example, Jim Mason's fire symphony, performed in the wee hours of Sunday morning—3 a.m. or so—this year. Mason has five tanks that shoot kerosene jets in the air, arranged in a four-tank circle 100 feet in diameter with one in the center. He has composed a three-movement symphony with musical notes represented by flames of different height and intensity bursting in planned rhythms and patterns from the five tanks. It is a perfect example of an art project that could only be pulled off in the space and emptiness of Black Rock. He conducts, speaking through headphone radio to the five tank operators and their spotters, one of whom is me, who all bear fire extinguishers.

"The Impotence Compensation Symphony will now begin," Mason jokes. It goes off impressively for the first two movements, though falling kerosene starts small fires on the tanks, the empty cracked playa, and a shirt left near a tank. A couple of the ground fires seem threatening, and I'm dashing from my spot on the center tank to help others with my water-pressure extinguisher. I slip in a sheet of kerosene; I right myself frantically. The 100-foot flame jets 10 feet from

Fiery End: Burning Man is a reminder that conflicts between alternative communities and the mainstream needn't end in hostile conflagration.

me are a hot weight crushing down on my skull, palpable, like a brick of fire balanced on my head. I keep patting my hair, certain it's on fire.

Streaks of flame pour down the tank 50 feet behind me. I rush to empty my extinguisher on it, futilely. Someone grabs the extinguisher from my hand. "Run, run, run, it might blow!" Mason is shouting. Performers and crowd form a circle 100 yards wide around the tank, perhaps secretly hoping for one more colorful explosion. Luckily—or alas—the tank, with its nozzle left open, runs out of kerosene before the pressurized liquid explodes.

One act of apparent violence shook the order of Black Rock City this year. A person or persons unknown detonated a small propane container underground outside the city perimeter, but close to the Washoe policemen's camp. Immediately, rumors flew that the U.S. Bureau of Alcohol, Tobacco, and Firearms had been called in, that undercover agents were roaming the city seeking loose lips, that military helicopters deposited men with Dr. Seuss hats and colorfully decorated bikes to blend in. A BLM officer solemnly (and mistakenly) informed a group of Burning Man participants that the explosive was ammonium nitrate, the stuff used in Oklahoma City. That started questions about militia activity and terrorist attacks.

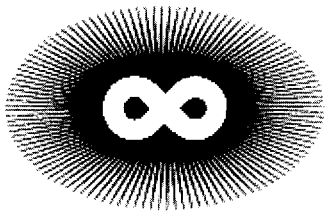
The mention of the BATF brings to mind parallels between the ironic nihilism of Black Rock City and the earnest millenarianism of another social experiment, the Branch Davidian "compound" outside Waco, Texas: communities separated from the rest of the world, united by outré beliefs, with lots of dangerous explosives, charismatic leaders, possibly exposing children to lewdness. If the BATF got involved, could Burning Man become another Waco? Local politicians certainly don't think that way. As Washoe County Commissioner Jim Shaw tells me, "People like to gather here who maybe believe in weird things, but they aren't bothering anybody, and I don't see why anyone should bother them."

Such words are a reminder that conflicts between alternative communities and the outside world don't have to end in fire—or at least not in hostile conflagration. After Burning Man '99 is just a memory I ask Lt. McHardy about the propane tank explosion. Whatever rumors I've heard, he says, the cops aren't taking it that seriously. McHardy's comments on that explosion could be read as a healthy attitude toward Burning Man as a whole. "The way I see it, someone wanted to see something go boom," he says. "They went out to an area they presumed to be vacant and less hazardous. I might be interested in meeting with the individual, but it wasn't that big of a deal."

It's far from clear that, as Larry Harvey and Michael Michael clearly hope, Burning Man is showing the world a new, better way to live (on an alkali salt flat with no water or electricity?). But the event demonstrates that there's still liberty in America. There are still frontiers—even if you need to endure a complicated permitting process to explore them. Hell, at least in the end they give you the permit. ◆

Brian Doherty (bmdoherty@aol.com) is the Warren Brookes Fellow at the Competitive Enterprise Institute.

JON ALLOWAY



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■ ■ ■

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- **Charles Paul Freund**, senior editor, *Reason*, "Dark Verge? The Uneasy Case of Vienna 1900"
- **Neil Gershenfeld**, leader, physics and media group, MIT Media Lab, author, *When Things Start to Think*, "Things that Think"

- **Nick Gillespie**, executive editor, *Reason*, "Popular Culture on the Verge"
- **Lisa Graham Keegan**, Arizona Superintendent of Public Instruction, "Innovations in Education"
- **Grant McCracken**, Harvard Business School, author, *Plenitude* and *Culture and Consumption*, "Verge of Verges: Sir Francis Bacon at the Gates of Gibraltar"
- **Christena Nippert-Eng**, sociologist, Illinois Institute of Technology, author, *Home and Work*, "Home and Work: Drawing the Boundaries"
- **Daniel Pink**, *Fast Company* contributor, "Free Agent Nation"
- **Steven Postrel**, UC-Irvine Graduate School of Management, "The Geek and the Dilettante: Sharing Knowledge Across Specialities"
- **Virginia Postrel**, editor, *Reason*, author, *The Future and Its Enemies*, "On the Verge: Exploring the Frontiers of Creative Encounter"
- **Adam Clayton Powell III**, vice president, technology and programs, The Freedom Forum, "Culture and Collision"
- **Richard Rodriguez**, author, *Days of Obligation* and *Hunger of Memory*, "Some Thoughts on the Burrito and the Browning of America"
- **Lynn Scarlett**, executive director, Reason Public Policy Institute, "Can Industry Save the Planet? The Rise of Industrial Ecology"
- **Michael Schrage**, columnist, *Fortune*, senior associate, MIT Media Lab, author, *No More Teams!* and *Serious Play*, "Serious Play"
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Rediscovering the social norms that stand between law and libertinism

By Jonathan Rauch

Lately I have begun to understand how a Methodist must feel when everyone he meets calls him a Lutheran. People often describe me as a libertarian. All right, it's true that I often write in a skeptical vein about government. Yes, I have come to see a higher, Zen-like power in leaving things alone. I generally do subscribe to H.L. Mencken's dictum, "All persons who devote themselves to forcing virtue on their fellow men deserve nothing better than kicks in the pants." But still. I know, in the visceral and insistent way the Methodist knows he is not a Lutheran, that my worldview is not quite congruent with what most people today regard as libertarianism.

It is hard to evade one label, however, when you can't offer another. If not "libertarian," then what? For a while, I tried "curmudgeon." A curmudgeon, in my own enlightened sense, is a person who is against improving things for the sake of it. (These days, "curmudgeon" is not the same as "conservative," because, ever since Barry Goldwater, many American conservatives have been radical reformers.) I tried "radical incrementalist." A radical incrementalist is a person who seeks to foment revolutionary change on a geological time scale. The trouble is that "curmudgeon" and "radical incrementalist" both describe my temperament but say nothing of my beliefs. So I gave up. And then, a little while ago, I figured it out. I am, I discovered, a soft communitarian.

A what? You roll your eyes, and I can't blame you. Bear with me, however. There is a fair amount of undesignated soft communitarianism about these days, and it signifies the emergence of an important sort of thinking.

A soft communitarian is a person who maintains a deep respect for what I call "hidden law": the norms, conventions, implicit bargains, and folk wisdoms that organize social expectations, regulate everyday behavior, and manage interpersonal conflicts. Until recently, for example, hidden law regulated assisted suicide, and it did so with an almost miraculous finesse. Doctors helped people to die, and they often did so without the express consent of anybody. The decision was made by patients and doctors and families in an irregular fashion, and,

DANIEL BAXTER

crucially, everyone pretended that no decision had ever been made. No one had been murdered; no one had committed suicide; and so no one faced prosecution or perdition.

Hidden law is exceptionally resilient, until it is dragged into politics and pummeled by legalistic reformers, at which point it can give way all at once. The showboating narcissist Jack Kevorkian dragged assisted suicide into the open and insisted that it be legalized (and televised). At that point, the deal was off. No one could pretend assisted suicide wasn't happening. Activists framed state right-to-die initiatives, senators sponsored bills banning assisted suicide, and courts began issuing an unending series of deeply confused rulings. Soon decisions about assisted suicide will be made by buzzing mobs of lawyers and courts and ethics committees, with prosecutors helpfully hovering nearby, rather than by patients and doctors and families. And the final indignity will be that the lawyers and courts and committee people will congratulate themselves on having at last created a rational process where before there were no rules at all, only chaos and darkness and barbarism. And then, having replaced an effective and intuitive and flexible social mechanism with a maladroit and mystifying and brittle one, they will march on like Sherman's army to demolish such other institutions of hidden law as they encounter.

The enemy of hidden law is not government. It is lawyers. Law schools teach that as a practical matter hidden law does not exist, or that if it does exist it is contemptibly inadequate to cope with modern conflicts.

The enemy of hidden law is not government, as such. It is lawyers. Three years in law school teach, if they teach nothing else, that as a practical matter hidden law does not exist, or that if it does exist it is contemptibly inadequate to cope with modern conflicts. The American law school is probably the most ruthlessly anti-communitarian institution that any liberal society has ever produced.

For eons, hidden law has coped sublimely with adultery. As long as the adulterer was discreet and the wife either didn't know what was going on or was willing to pretend she didn't know, everybody else also pretended not to know. Public law's rather different way of handling the situation was on display in the Clinton-Jones-Starr-Lewinsky affair, and it was not superior. So, also, for sexual conduct involving adults in the workplace. Hidden law was imperfect for situations where flirting got out of hand, but today's sexual harassment law, in which platoons of lawyers scour office e-mails for hints of unwelcome overtures, is proving itself not just imperfect but grotesque.

What about the "soft" part? Why a "soft" communitarian? Because there is a harder variety that replicates the lawyers' mistakes in a communitarian direction. The hard communitarian, seeing that hidden law has broken down, demands a series of public laws or subsidies to reestablish it. Require children to support their aging parents, require students to do involuntary volunteer work, make voting mandatory—that sort of thing. The archetype of the hard communitarian is Lee Kwan Yew, the former prime minister of Singapore. In America, an example might be Rudolph Giuliani, the mayor of New York City.

We softies, by contrast, understand that hidden law works precisely because it is not formal: The very act of formalizing it destroys it. We believe, therefore, that public law's next big project should be to sit down and shut up. That is, public law should be careful, infinitely more careful than at present, not to burst into every room it sees and immediately begin breaking crockery. It should strive to stay out of hidden law's way, rather than obliviously trampling it with each elephantine footfall. When personal behavior needs regulating, we soft communitarians prefer exhortation to legislation and shame to jail. A good, albeit controversial, example of an effective soft-communitarian activist is Bill Bennett, with his *Book of Virtues*, his "index of leading cultural indicators," and his denunciations of gangsta rap. Bennett says he opposes legal regulation of song lyrics, but he certainly does not oppose confronting recording company executives and demanding that they read aloud some of the lyrics they sell. He practices censoriousness rather than censorship. That is "soft" in a nutshell.

We soft communitarians are soft in a further sense: Like F.A. Hayek (who in some ways was a soft communitarian), we do not believe in taking an uncritical attitude toward social norms, even deeply embedded ones. With all due respect to folk wisdom, I favor gay marriage, even though nothing could be less traditional. Now that we know that homosexuals exist—that they are not just neurotic heterosexuals who need a few jolts of electroshock—the extension of the nuptial contract to them is not a sundering of tradition but an extension of it. Thoughtful criticism allows us to see this. Soft communitarianism is not blind obeisance to tradition. It aspires to be rigorous rather than rigid.

An interesting question about soft communitarianism is: So what? Who could be against such a mushy and innocuous doctrine? Or who, anyway, apart from everyone who ever went to law school? You might point out that soft communitarians can be found toward the drab center of both political parties, where everyone is for "values" and "civil society." You might also note that soft communitarianism is perfectly consonant with most major strands of libertarianism. The reason I am often mistaken for a libertarian—even though I am more

comfortable talking about rules than rights, I prefer reasonableness to reason, and I care about government's effectiveness rather than its size—is that my soft communitarianism leads toward a persistent skepticism about the oozing encroachment of public law into every pore of daily life. Maybe the soft communitarian and the libertarian, like the Methodist and the Lutheran, are just two versions of basically the same thing.

But not so fast. The fact is, many libertarians I know react with discomfort, often bordering on hysteria, to soft-communitarian talk. They feel that if their life is not the law's business, then it also is nobody else's business. They are deeply uneasy with social instruments like shame or opprobrium, which smack of big-nosed authoritarianism in a new guise.

And here a certain sort of libertarianism comes full circle to join hands with a certain sort of leftism. The libertarians and the leftists come to blows over economic issues—who should run the health care sector, for instance—but they glare in hostile unison at the soft-communitarian project (which, remember, also enlists some libertarian types of its own; this gets complicated). Underlying their hostility is an implicit theory of coercion that is worth grappling with, because it lies at the heart of today's culture wars. In that connection, consider Michael Warner.

Warner is, to begin with, an English professor at Rutgers University. But he is probably better known as a leading queer studies scholar. And, more than that, he is an activist, closely associated with an extremely controversial group called Sex Panic!, which organized in the mid-1990s to oppose what it regarded as the squelching of sexual freedom by gay and straight conservatives alike.

I ought to say, not that it matters, that I am discussed in passing in Warner's new book, *The Trouble With Normal: Sex, Politics, and the Ethics of Queer Life* (The Free Press). Warner quotes me on gay marriage and says I am "more honest than most" of his ideological adversaries: a compliment I can return in kind. Because *The Trouble With Normal* is, in large measure, an answer to Andrew Sullivan and other gay conservative advocates of homosexual marriage and assimilation, and because it concerns itself with various intramural disputes in the gay world (strategies for AIDS prevention and the like), booksellers will confine it to the "gay interest" shelves. That is a pity. Warner is that rarest of writers, an honest extremist who is smart enough to see through to most (though not all) of the depths of his own positions and who is fiery enough not to flinch. His agreeably written and commendably concise book thus turns out to be, among other things, a 200-proof distillation of the case against soft communitarianism.

For example, Warner is shrewd enough to see that the standard defense of gay marriage by gay activists is wrong. This defense holds out marriage as just one more lifestyle option. It is available to heterosexuals, so it should be available to homosexuals as well, and that's all there is to it. But this is wrong. Marriage, as Warner aptly puts it, is "a social system of both permission and restriction." Spouses and society alike view matrimony as something special and exalted; it is not merely allowed, it is encouraged. Far beyond merely creating legal arrangements, it is freighted with the social expectations and implicit requirements of hidden law. It is a bargain not just between two people but between the couple and society: The spouses agree to care for one another so that society does not need to, and society agrees in exchange to view their commitment to each other as inviolable and sovereign and, indeed, sacred.

Traditionalist conservatives understand that marriage confers special status under hidden law, which is why they so fiercely oppose extending it to homosexuals. I understand that marriage confers special status, which is why I favor extending it to homosexuals. And Warner, piping up from the radical left, also understands marriage's special status, which is why he *opposes* gay marriage. When marriage is available to gay people, he understands, gay people will be expected to marry, and married homosexuals will conduct themselves with the same (let's face it) smugness that characterizes married heterosexuals. "The effect," Warner says, "would be to reinforce the material privileges and cultural normativity of marriage." Homosexuals who do not marry will be regarded as less respectable or less successful than those who do.

In Warner's view, that would be a profound miscarriage of social justice. For Warner is against not just the sexual norms of the moment but the very notion of sexual norms. That is not to say he would decline to pass harsh judgment on a rapist. But where consensual sex is concerned, he insists, society should just butt out. Not only should the law stay out of the bedroom (a standard libertarian position), so should norms, because all norms create "hierarchies of respectability."

Shame is valuable not because it is pleasant or fair or good but because it is the least onerous of all means of social regulation, and because social regulation is inevitable.

Warner opposes sexual norms for two reasons. The first is that he is a radical egalitarian. He believes in the moral virtue of diminishing differences—moral, economic, or political—between people and groups. There is no arguing with a radical egalitarian on that point, so I won't.

The second reason goes a little deeper. Warner makes a move which ordinary classical liberalism rejects out of hand but which has an undeniable kind of deep sense to it. In standard liberal theory, coercion and force involve violence or the threat of violence: "Your money or your life." Because, in modern democracies, the state possesses a monopoly on legitimized violence, a coercive policy will be, by definition, a state policy. Nothing that private people or institutions do by way of criticism or exclusion is coercive.

To Warner and others of his school, that view of coercion is laughably narrow and naive. Norms use the clubs of stigma and shame to punish deviants, nonconformists, and radicals. Many people would much rather be jailed than humiliated or ostracized, which is one reason American prisons are so crowded. In a psychological sense, the denial of respectability can be just as coercive as the denial of physical freedom. Nowhere in his book does Warner argue the theoretical case for his extended notion of coercion, but it is apparent on every page. He regards moralizing as a kind of mandating, speaks of "the effect of coercion in the politics of shame," and refers to the "deep coerciveness" of the sort of thinking that privileges marriage. In his world, all social norms are more or less coercive, which means that all of them are oppressive when applied to consenting adults' sexual or social lives.

Whatever its theoretical shortcomings, this sort of thinking exerts a broad attraction in today's America. Lots of people view Gary Bauer's or Jerry Falwell's strident condemnations of the "homosexual lifestyle" as being every bit as oppressive and intrusive as, say, sodomy laws. For that matter, lots of people believe that moral criticism causes violence by fostering hate, or that moral criticism actually *is* violence ("words that wound"). Many people in America—a majority, maybe—feel queasy talking about "virtue" and "vice," because that sort of talk implies judgmentalism, which implies a "hierarchy of respectability." People prefer sanitized expressions like "values." I would be curious to see what would happen if you visited a randomly selected college campus and asked the students whether it is right to judge other people's lifestyles. My guess is that most students would be appalled at the notion.

What is useful about Warner is that, being both bright and radical, he has no use for the mushy middle, where most ordinary people are content to leave such ideas. He understands the implications of his view of coercion and does not shrink from embracing them. The sort of nightmare society that a Falwell or a Bauer dreams up in order to scare donations out of church ladies is precisely the sort of society Warner wants to create. To be sexually free, we need to be able to explore all possible sexual avenues with an open mind, and thus without fear of shame or stigma. Keeping certain sexual behaviors hush-hush means that most people never think about trying them, which amounts to "constraint through ignorance." There should be no more closets of any sort. Rather, says Warner, let "all the gerbils scamper free."

And so, in the end, it is not gay marriage Warner opposes: It is marriage, and all the conventional notions of shame and responsibility that go with marriage. He does not actually demand that marriage be abolished, because, being a pragmatist, he would rather undermine it by extending all its benefits to unmarried partners—in fact, to everybody. He is likewise not foolish enough to imagine that sexual norms could be eliminated anytime soon, but he believes that the proper role of socially enlightened activism is to favor de-norming at every turn.

Although Warner's view is extreme, it is more influential than you might suppose. All three of the states and all but a handful of the municipalities that offer domestic partner programs for their workers include opposite-sex couples, who, of course, could perfectly well get married if they wanted the benefits of marriage. The large majority of corporate partnership programs also allow heterosexuals to participate. Who is to say, after all, that marriage is better than some other arrangement? Only recently, and with great effort, was the national welfare debate retrieved from the hands of nonjudgmentalists who argued that government's job was to help the indigent, not to judge them.

I am not a soft communitarian because I think shame and stigma are sweet and lovely things. They are not. A weakness of the soft-communitarian position is its unwillingness to admit the truth in much of what Warner says. In some respects, norms are oppressive and shaming is coercive. Having admitted this, however, one can go on to see what Warner, and other anti-communitarians, do not: that soft communitarianism is less oppressive, usually much less so, than the real-world alternatives. Shame and hypocrisy are not ideal ways to deal with philanderers and small-time mashers, but they are better than Paula Jones' litigators and

Kenneth Starr's prosecutors. Shame is valuable not because it is pleasant or fair or good but because it is the least onerous of all means of social regulation, and because social regulation is inevitable.

The implication of Warner's view is that the only just society is one without any sexual norms regulating the conduct of consenting adults. But, of course, a normless society is as inconceivable, literally, as a beliefless individual. What would a culture without shame or guilt or "hierarchies of respectability" look like? How is a shameless society even imaginable, given the unbudgeable fact that humans, like dogs and chimpanzees, look to each other for guidance and approval and clues on how to behave?

The fact is, there are going to be norms; the question is always, What sort of norms? In Warner's world, the norm would be one of extreme social permissiveness. People who expressed anything but approval of sexual adventurism would be stigmatized: shamed for engaging in the oppressive act of shaming. If you don't think this can happen, ask any student or professor who has been on the receiving end of a P.C. vilification campaign.

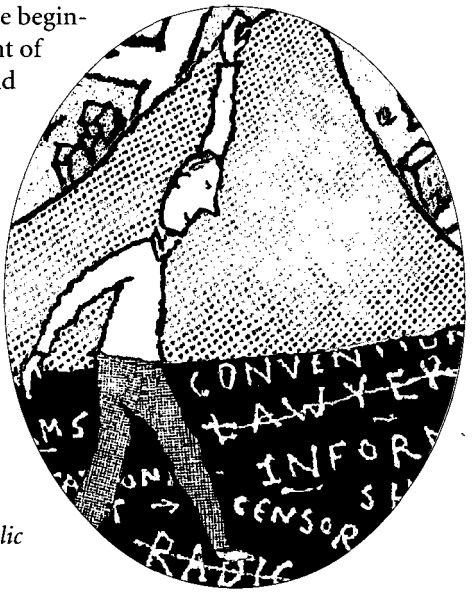
It is also a fact, I think, that shame is a core constituent of a social animal's temperament. Human beings crave the admiration of other human beings more than they crave anything else— even, in many cases, life. Warner seems to view shaming as a political sanction that, with enough effort, we can teach ourselves not to use. But not to shame or be ashamed is like not loving, not laughing, not eating or talking. So the Warnerian project is to repeal not just shame but humanity. In that sense, Warner's utopia is like the Marxist utopia, which repealed greed. My guess is that Warner's normless sexual utopia would be about as successful, and about as good for the downtrodden and marginalized, as Marx's classless economic utopia turned out to be.

Oddly, the words *child* and *children* scarcely ever appear in Warner's book. This is an astonishing blind spot in a work of social criticism. Being a defender of gay marriage, I'm as tired as the next fellow of people who use children as a cover for all sorts of authoritarian arguments. Still, Warner seems to find the very concept of parenting unfathomable. The thought that sexual adventurers might be expected to keep certain of their activities out of the sight of 10-year-old boys and girls, in exchange for being left alone, does not seem to have occurred to him. ("No, darling, that's not a game. Those two people are doing what we call 'fistfucking.'") If you believe, as seems plausible, that there is a genuine clash of interests between parents and sexual adventurers, then the old dictates of hidden law—"keep it out of sight," for instance—seem to be a pretty ingenious way to strike a balance.

Some especially conservative parents are indignant because sexual adventuring is too visible, while some especially radical adventurers are indignant because they are not allowed to copulate in front of City Hall. Everyone else wishes the conservatives and the radicals would stop pushing the envelope before the bargain collapses altogether, leaving nothing but cops and politicians and lawyers to tell us how to behave. In the end, the man who wants to replace norms with nothing is the best friend of the man who wants to replace norms with laws. Dr. Kevorkian no doubt thinks of himself as a great champion of the right to die. In fact, as is obvious to everybody but himself, he is a godsend to opponents of assisted suicide. Michael Warner is the Jack Kevorkian of sexual liberty.

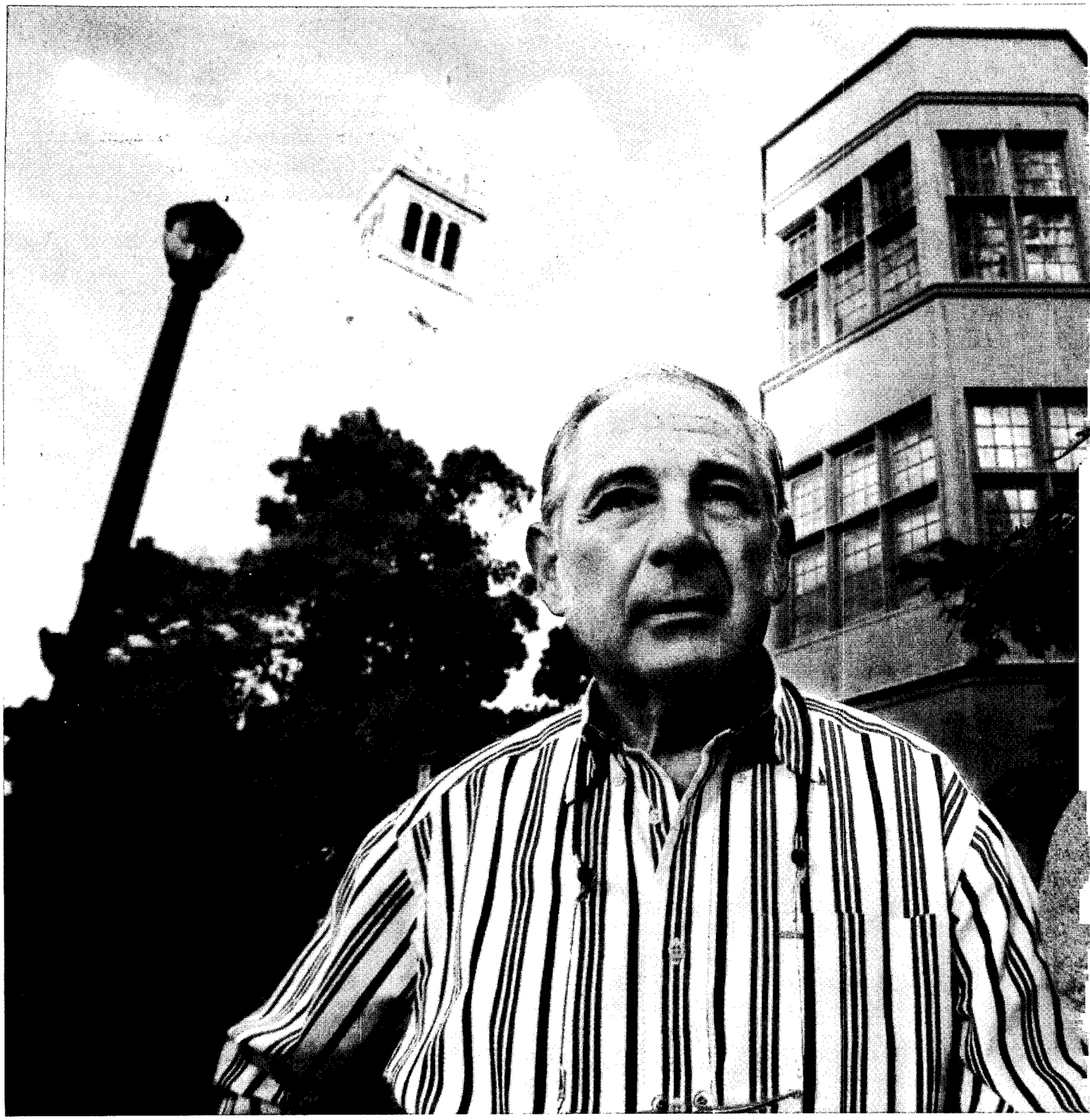
The good news is that Warner will fail in his mission of de-norming the world. He will be unable to persuade American homosexuals to rise up and rebel against hidden law and its Main Street codes of behavior. The tide is running against him, and he knows it. Perhaps the most heartening aspect of Warner's book is its rage and despair over what Warner regards indignantly as the taming of homosexual politics and culture, the growing ascendancy of "gay" over "queer." Homosexuals are moving toward embracing the contract with hidden law. They want to follow the rules and be respectable, and the heterosexual majority seems more and more inclined to let them.

The further good news is that gradually, quietly, Americans are becoming aware of the existence of hidden law. Slowly—OK, sometimes very slowly, and with the legal establishment still winning more battles than it loses—Americans are beginning to rediscover the lost continent of convention that lies between law and libertinism, between banning and condoning. They are, I like to hope, beginning to see that the hidden constitution, with its elaborate rules of etiquette and its byzantine architecture of pretense and its elaborate hierarchies of respectability, is much like the written constitution: It restricts us so we can be free. ◆

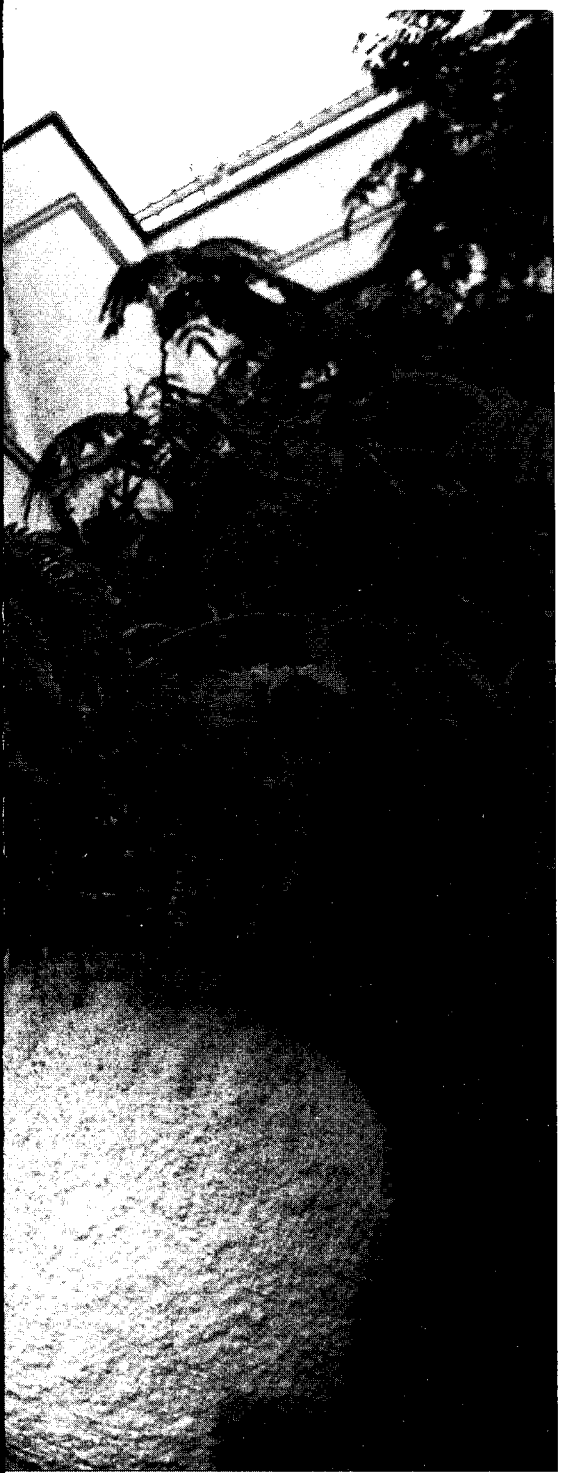


Jonathan Rauch is the author of the new book Government's End: Why Washington Stopped Working *(Public Affairs).*

Reality Principles



Eminent philosopher John R. Searle defends free speech, free inquiry, and the Enlightenment.



PHOTOS: NEIL MICHEL

In an intellectual scene filled with critics of the Enlightenment's quest for a coherent understanding of the way the world works, philosopher John R. Searle has become a high-profile defender and exemplar of Enlightenment methods. A professor of philosophy at the University of California at Berkeley and the author of 10 books, he attacks big questions —the nature of reality, the mind/body problem, the nature of consciousness— in what he sees as a continuation of the Enlightenment's scientific and philosophical program.

Along the way, he has become a leading voice in the debates over the possibility of artificial intelligence. Among A.I. researchers and cognitive scientists, he is most famous, and controversial, for his "Chinese Room" thought experiment, which attacks the idea that intelligence is merely rapid computation.

"Philosophy in the Real World," the subtitle of his most recent book, *Mind,*

Interviewed by Edward Feser and Steven Postrel

Language, and Society (1998), captures two important aspects of Searle's work: First, he focuses his rigorous philosophical explorations on our common sense of how the "real world" works. Searle believes that good philosophical inquiry begins by paying close attention to everyday experiences, such as speech, and noticing their strangeness. "We have to begin by approaching the problem naively," he has said. "We have to let ourselves be astounded by facts that any sane person would take for granted."

Second, Searle believes that the world is in fact real, not a mere construct of texts and word games, and that we can understand that real world—a position known as "metaphysical realism." He is famous as a vocal and vigorous defender of reason, objectivity, and intellectual standards within the academy. In 1977, he engaged in a highly publicized and often nasty debate over deconstruction's logical incoherence with French critic Jacques Derrida.

Searle, 67, says he's not particularly political, preferring intellectual life: "It's more fun. In the long run it's more satisfying" than political life. But his intellectual convictions have led periodically to political controversy. As an undergraduate at the University of Wisconsin, he was active in Students Against McCarthy, a group opposed to Wisconsin Sen. Joseph McCarthy and his House Un-American Activities Committee. He left Wisconsin at 19 to study at Oxford as a Rhodes Scholar, returning to the United States in 1959, when he joined the Berkeley faculty. A proud supporter of the Free Speech Movement at Berkeley in the early 1960s, he is concerned today with the erosion of free speech, free inquiry, and academic standards on college campuses.

Searle was interviewed in his Berkeley office in November by Edward Feser (star3brn@1stnetusa.com), who teaches philosophy at Loyola Marymount University in Los Angeles, and Steven Postrel, an economist who teaches business strategy at the University of California, Irvine. Searle's arm was in a sling—he broke it in a household accident he finds particularly embarrassing to discuss given his fracture-free years as an avid skier—and his office was a bustle of activity, with research assistants and students coming and going.

Reason: In your book *Mind, Language, and Society*, you say you're going to defend the "Enlightenment vision." How would you define this vision, and why does it need defense?

John R. Searle: During the 18th century primarily, but even going back longer in history, there was a movement, largely in Western Europe, that sought to throw off various kinds of superstitions. The parts of this "Enlightenment vision" that I find most impressive are the ideas that the attainment of scientific truth and the advance of human rights and democratic government would lead to enormous possibilities for human progress. And, despite a lot of setbacks, something like that happened.

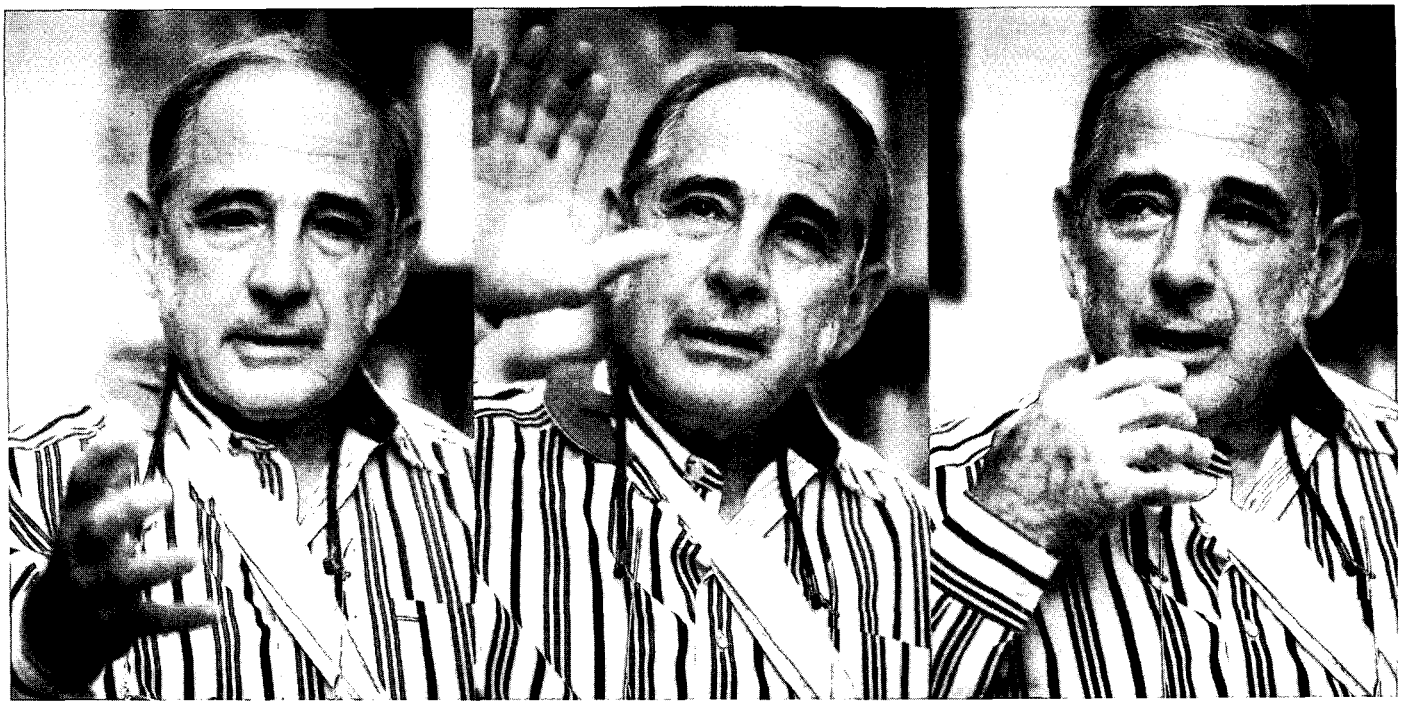
In the past few decades there has been a movement sometimes described as the "postmodern movement." There's no single word that's really adequate to describe it, but that's one that the people [involved] typically accept. In many respects, they see themselves as challenging the Enlightenment vision that there is an independently existing reality, that we can have a language that refers in some clear and intelligible way to elements of that reality, and that we can obtain objective truth about that reality. They advance the view that what we think of as reality is largely a social construct, or that it's a device designed to oppress the marginalized peoples of the world—the colonial peoples, women, racial minorities. They see the attempt to attain rationality and truth and knowledge as some kind of power play, and what they want instead is what they take to be more liberating—a rejection of the rationalist view.

Reason: One version of "postmodernism" which you discuss is "relativism." There are many varieties of relativism, and it's pretty clear from your book that you take the arguments for these views to be pretty bad.

Searle: I think they're terrible.

Reason: How did you characterize these arguments, and what do you think is wrong with them?

Searle: There are a number of arguments. The one that most affects people today is what I call "perspectivalism." That's the idea that we never



have unmediated access to reality, that it's always mediated by our perspectives. We have a certain perspective on the world, we have a certain position in society that we occupy, we have a certain set of interests that we articulate, and it's only in relation to these perspectives that we can have knowledge of reality. So the argument goes, because all knowledge is perspectival there is no such thing as objective knowledge—you can't really know things about the real world or about things as they are in themselves.

Now that's just a bad argument. I grant you the tautology: All knowledge is our knowledge. All knowledge is possessed by human beings who operate in a certain context and from a certain perspective. Those seem to me to be trivial truths. But the conclusion that therefore you can never have objectively valid knowledge of how things really are just doesn't follow. It's a bad argument. And that's typical of a whole lot of these arguments.

Reason: You've debated Richard Rorty and Jacques Derrida. Are they making bad arguments, or are they just being misread?

Searle: With Derrida, you can hardly misread him, because he's so obscure. Every time you say, "He says so and so," he always says, "You misunderstood me." But if you try to figure out the correct interpretation, then that's not so easy. I once said this to Michel Foucault, who was more hostile to Derrida even than I am, and Foucault said that Derrida practiced the method of *obscurantisme terroriste* (terrorism of obscurantism). We were speaking French. And I said, "What the hell do you mean by that?" And he said, "He writes so obscurely you can't tell what he's saying, that's the obscurantism part, and then when you criticize him, he can always say, 'You didn't understand me; you're an idiot.' That's the terrorism part." And I like that. So I wrote an article about Derrida. I asked Michel if it was OK if I quoted that passage, and he said yes.

Foucault was often lumped with Derrida. That's very unfair to Foucault. He was a different caliber of thinker altogether.

I think I sort of understand Richard Rorty's view, because I've talked to him more, and he's perfectly clearheaded in conversation. What Rorty would say is that he doesn't really deny that there's an external world. He thinks nobody denies that. What Rorty says is that we never really have objective knowledge of that reality. We ought to adopt a more pragmatic approach and think of what we call "truth" as what's useful to believe. So we shouldn't think of ourselves as answerable to an independently existing reality, though he wouldn't deny that there is such a thing.

The problem that all these guys have is that once you give me that first premise—that there is a reality that exists totally independently of us—then the other steps follow naturally. Step 1, external realism: You've got a real world that exists independently of human beings. And step 2: Words in the language can be used to refer to objects and states of affairs in that external reality. And then step 3: If 1 and 2 are right, then some organization of those words can state objective truth about that reality. Step 4 is we can have knowledge, objective knowledge, of that truth. At some point they have to resist that derivation, because then you've got this objec-

"The best comment about behaviorism is the old joke about the two behaviorists after they just had sex. He says to her, 'It was great for you, how was it for me?' If behaviorism were right, that ought to make perfectly good sense."

tivity of knowledge and truth on which the Enlightenment vision rests, and that's what they want to reject.

Reason: You are continuing your own Enlightenment program to try to solve what you think are the unsolved problems of that tradition. Could you describe how you ended up involved in this project?

Searle: My primary interest is not in fighting this lunatic fringe. The main thrust of my philosophical work is constructive.

I started off with language: How does language relate to reality? People can say, "You've said something true or false, or relevant, or irrelevant, or intelligent or stupid"—and that's a remarkable fact. In the style of philosophy, we ought to be astounded by what any sane person takes for granted, namely that by flapping this hole in my face and making noises I can give a lecture, or advance a thesis, or convince people, or all the other things you can do with language.

"We ought to be astounded by what any sane person takes for granted, namely that by flapping this hole in my face and making noises I can give a lecture, or advance a thesis, or convince people."

So I wrote my first book about that. I said speaking a language is performing certain kinds of speech acts according to rules, and I laid out the rules by which we make statements, ask questions, give orders, explanations, commands, promises, threats, vows, pledges, and all the rest of it.

My first two books were about that: speech acts. During the writing of those books, I talked about beliefs and desires and intentional actions, and that's like borrowing money from a bank: If you're going to use those notes, you've got to pay that back. You've got to at some point sit down and explain what the hell is a belief, what is an intention, what is a desire.

So I wrote another book, and this was the hardest book I ever wrote, *Intentionality*. It took me almost 10 years to write that book. I put all that together: What are the foundations of language in the operation of the mind? Because the meaningfulness of language is an extension of the more biologically fundamental characteristics of the mind. "Intentionality" doesn't just mean intending, but it means any way that the mind has of referring to objects and states of affairs in the world. So not just intending is intentionality but believing, desiring, hoping, fearing—all of those are intentional in this philosopher's sense.

Part of the fun of this profession is that if you solve one problem, it gives you three others. One of the problems it opened up was, How does the mind fit into the real world? How is the mind part of reality? That's the traditional mind/body problem.

So I wrote a couple of books about that, and in the course of that work I discovered that there was this new science that I would become a part of, "cognitive science." That was great, because cognitive science was overcoming "behaviorism," which had been the orthodoxy in psychology.

Reason: What do you mean by behaviorism?

Searle: Behaviorism was the idea that when you do a scientific study of the mind, you don't actually try to get inside the brain and figure out what's going on, you just study overt behavior.

Reason: Inputs and outputs?

Searle: Inputs and outputs. And the science of psychology on the behaviorist model was you were going to correlate these stimulus inputs with the behavioral outputs. It's a ridiculous conception of the mind—the idea is that there's nothing going on in there, except you have the stimulus input and the behavioral output.

The best comment about behaviorism is the old joke about the two behaviorists after they just had sex. He says to her, "It was great for you, how was it for me?" (Laughter) If behaviorism were right, that ought to make perfectly good sense, because there's nothing going on in him except his behavior, and she's in a better position to observe his behavior than he is.

OK, so I thought, We're overcoming behaviorism. That's great. We're going to have a science of the mind that gets inside the brain. What I discovered was that all these people thought the mind was a computer program. So I had a big debate with them, and that's why I introduced the argument called the "Chinese Room" argument: I imagine myself carrying out this computer program for some cognitive capacity I don't have. I'm locked in a room shuffling Chinese symbols according to the program. Now, it turns out, in my thought experiment, that I can give answers in Chinese that are as good as Chinese speakers'. But I don't understand Chinese, I'm just a computer. And if I don't understand Chinese by being a computer, neither does any other computer. Just running a program isn't enough for the mind.

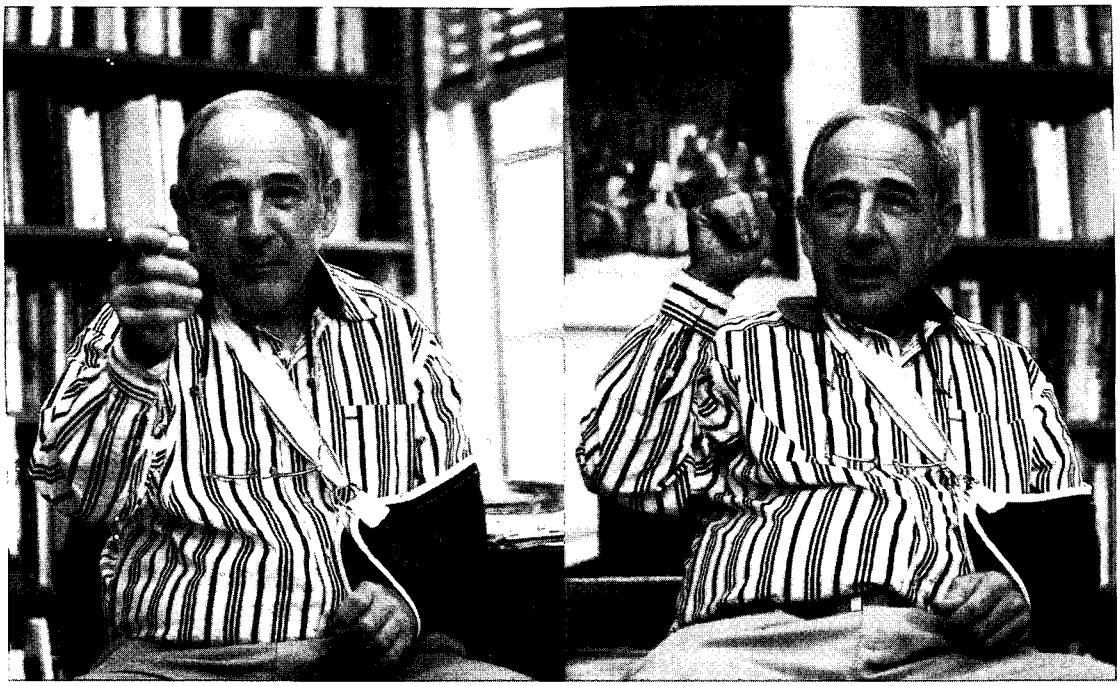
I have had plenty of debates about that, and that still goes on. A book about 20 years of the Chinese Room is going to come out.

Reason: A little sick of that argument, are you?

Searle: I'm kind of bored with it, to tell you the truth. I tell people, "Look, I got an A in Chinese Room. I took the course for credit, I got my term paper in on time—why do I have to keep taking it over and over?"

Reason: Do people continue to come up with new arguments, or is this becoming a ritualized debate, like gun control or abortion?

Searle: I'm familiar with most of the moves. Sometimes you see wrinkles on them. One common move is to say, "Well, you don't understand Chinese: It's the whole room that understands Chinese." That's no good, because the reason I don't



"Very intelligent people thought that in the long run capitalism was doomed, and some kind of socialism was our future. Where is it today? It's dead."

understand Chinese is that I have no way of knowing what the words mean. But then neither does the room. The room has no way to get from the syntax to the semantics. You can see that by imagining that I get rid of the room and do all of it in my own head: memorize the rules, memorize the box of symbols, and do all the calculations in my head, memorize the program. But even still I don't understand Chinese, because I have no way to get from the syntax, the formal symbols, to what they mean.

As I said, part of the fun is when you get some questions solved, you get a whole bunch of others. There's a question that's always bothered me and that is, How can there be an objective reality that's only real because we think it's real? Take money. I mean, it's just bits of paper. But it works. People don't say, "Well, maybe *you* think that's money, but we don't." They accept it, and it works. And what goes for money goes for universities and property and marriage and journal interviews and language in general, and cocktail parties and tenure and a whole lot of other things that are socially constructed—they're socially created. And I wrote a book about how that works: How does the mind of an individual cooperating with other individual minds create or construct a social reality that can then have an objective existence? So, even if I stop thinking it's money, it has an institutionalized status, so it still remains money. It isn't just my opinion it's money.

But you still have a lot of problems left over. Right now I'm writing a book on rationality. That's a tough one. What makes behavior rational or irrational? What's the logical structure of the process of reasoning that results in a rational decision? And what kind of structure can do that? That's a hard question. And I think most of the accounts we have of that in decision theory and so on are really inadequate.

Reason: So you started out with language, then mind, then society, the whole set of bigger questions. Is there a relationship between language, mind, and society, and so forth that's inextricable?

Searle: If your theory isn't coherent, it's not a good theory. Now here's the overall picture: The world consists of entities that we find it convenient to call particles. That's it—there are just particles in fields of force, and everything else is consequences, or organizations, or effects of those particles.

Some of those particles are organized into systems, some of those systems are made largely of carbon-based atoms, and some of those carbon-based systems, especially the ones with lots of hydrogen, nitrogen, and oxygen, evolved into organic systems. And some of those organic systems now are alive, and those evolved by process of selection over long periods of time into living organisms.

Some of those living organisms have got neurons, and some of those neuron-based systems have got consciousness and intentionality. That's where I come in. I've got nothing to say about that other stuff. All the other stuff, from the quantum mechanical level right up through evolutionary biology, I just get out of undergraduate textbooks. I come in when we get to systems that have consciousness and intentionality.

Then it seems to me you've got a lot of fascinating questions, and that's what I'm interested in. How do consciousness and intentionality work in

the brain? How is it they function logically—what are the logical structures of these phenomena? How does one organism relate to the consciousness and intentionality of other organisms? How do you get the structure of language? How does language give you the basis for the rest of society?

Now that, I think, is a continuation of the Enlightenment project. We want a unified account of our knowledge, and I think we can get it.

Reason: While the approach is different, the intention isn't that different from something like E.O. Wilson's *Consilience*, trying to unify all knowledge into a single structure.

Searle: Right. I don't agree with the details, but he's certainly somebody whom I would think of as sharing my overall objectives.

Reason: So would you say that the same unity would be true of facts and values? Or are you more of a Humean?

Searle: What I'm doing now in my book on rationality is to try to show how we shouldn't be thinking in terms of ethics vs. science. We ought to think of what we call ethics as a branch of practical reasoning—how the conscious, intentional organism reasons about what to do, particularly if the organism's got a language. If you think of it that way, then the traditional debates between ethics and science seem kind of irrelevant.

I'm not attacking the traditional philosophical problem head-on, because I think that gets us nowhere. I'm trying to show that there's a different way of looking at these issues, about the relation of the individual and culture, about the relation of biology and culture, the relation between the mind and the body. And if you look at it from this different point of view, then it seems to me you get different and more truthful results.

Now this carries over to political philosophy. It seems to me that we don't have what I would call a political philosophy from the middle distance. Let me give you an example. It seems to me the leading sociopolitical event of the 20th century was the failure of socialism. Now that's an amazing phenomenon if you think about it, because in the middle years of this century, clever people thought there was no way capitalism could survive. When I was an undergraduate at Oxford in the 1950s, the conventional wisdom was that capitalism, because it is so inefficient and so stupid, because there's not a controlling intelligence behind it, cannot in the long run compete with an intelligently planned economy.

It's hard today to recover how widely that view was held among serious intellectuals. Very intelligent people thought that in the long run capitalism was doomed, and some kind of socialism was our future. Some people thought it was Marxist socialism, and other people thought we were going to have democratic socialism, but somehow or another it had to be socialism.

Where is it today? It's dead. Even the European socialist parties, though they still keep the names, are adopting various versions of capitalist welfare states. I would like an intelligent analysis of this, and I can't find it.

Reason: You mean why people believed it?

Searle: Why it failed. Why did that belief die so spectacularly? I'm not convinced that we even have the apparatus necessary to pose an answer to the question. I think we need a conceptual improvement, and it would be piecemeal. It would be like the additions that Max Weber made when he introduced notions like rationalization, charisma, and all the rest of it.

Reason: Along these lines, you wrote an article for a German paper in which you said that Friedrich Hayek's *The Road to Serfdom* was the "book of the century."

Searle: Like every other undergraduate of my generation, when Hayek's book came out, I found it was treated as an object of ridicule. I remember a professor of economics saying, "Hayek is the last of the Mohicans of the classical economists. He's the last one left, holding this absurd view that's long since been refuted."

As a result, I never read the book when I was a student, but many, many years later, I sat down and read it, and it seems to me a remarkable book to have written in 1944. It's a kind of a prophetic book. If we're going to talk about the failure of socialism, an awful lot of the failures had to do with exactly what Hayek predicted. It would be interesting for somebody to analyze in a more scholarly vein to what extent he was right: that there wasn't any halfway point of democratic socialism, that it would naturally collapse into various forms of oppression, that however well-intentioned the setting up of the socialist bureaucracy was, it would be bound to have calamitous effects.

So I was asked by this very prestigious German magazine—it's a weekly newspaper really, *Die Zeit*—what was the book of the century. Of course, there are a lot of books that I admire, but many were already taken by others, and I couldn't pick Joyce's *Ulysses*, for instance. So I fastened onto Hayek's *The Road to Serfdom* and wrote an article [about] why I thought that was, if not *the* book of the century, certainly among the books of the century.

Reason: What was the response?

Searle: I got a fair number of letters, all sympathetic. And a lot of my fellow professors who read German were impressed by it and agreed with me that Hayek had seen the limitations of socialism.

Reason: The tide is turning in his favor?

Searle: I think it is.

Reason: Among the academics?

Searle: Yeah. I think he's becoming more respectable. There are books out about him. Now I don't know the details of his work well enough to make an intelligent appraisal of it. I think he overstates some of his cases. He says, for example—not in *The Road to Serfdom* but somewhere else—"If there's one message that I would like to leave, it is that there's really no such thing as social justice." That justice is always something that goes on at an individual level. You might do an injustice to me, or I might get an unjust decision out of the courts, but the idea that there's such a thing as justice at the level of society—he rejects that. And I'm not sure he's right to reject that.

I'd like to think that through more, because I sense that the idea that there are socially just and socially unjust forms of social organizations would follow from my account of social reality—that you can create unjust social institutions. If you get massive inequities that become ossified, I would have doubts about it. But Hayek's point was that the inequities of a free market distribution system are not by themselves unjust. And I would agree with that up to a point.

One good thing about Hayek is he explodes this sort of glib talk that people have about social justice and social injustice. If you're going to talk about a gain in social justice, you'd better know exactly what you mean.

Reason: At least some aspects of your recent work, such as your book on the construction of social reality, resonate with certain themes in Hayek's work. Is there any influence there?

Searle: There wasn't, no. Because everybody spoke so badly of him, I never took Hayek seriously until after he was dead. I'm embarrassed to say that. When I wrote *Mind, Brains, and Science*, he wrote me a very gracious letter and sent me a book. I thought it was real nice, and I wrote him back and I was surprised to get his book on perception.

Reason: *The Sensory Order*?

Searle: *The Sensory Order.* It's quite interesting. But that came out of the blue—I mean, I was not a Hayek fan. I didn't know anything about Hayek.

Reason: He was known as a very wide reader.

Searle: Here's the irony: I'm an admirer of his. I'm sure I admire him far more than he ever admired me, but he read more of me than I did of him. (Laughter)

Reason: To get back to our earlier discussion, a lot of the radical ideas we talked about started gestating in the 1960s, as did a change in the role of politics in the university. You were involved in the Free Speech Movement (FSM) here at Berkeley.

Searle: I was very active.

Reason: I wonder if you could say a little bit about your role in it, and any reflections you might have.

Searle: In 1959, when I came back to the United States from Oxford, where I had been teaching, I wanted to be more active in the life of the community than I could be as an expatriate. I've always been active in civil liberties issues—I believe in human rights and especially the right to free speech and free expression. I was active in opposing what was then called the House Un-American Activities Committee. [HUAC] put out a movie called *Operation Abolition*, and this movie was going to be shown in the law school [at Berkeley]. I was asked to comment on the movie, and just a couple of hours before I was to address these law school students, they got a call from the chancellor's office saying my speech was canceled. I, an assistant professor in this university, was not to be allowed

"My disenchantment with student radicalism came not because of the Free Speech Movement but because of the events that occurred afterwards. A lot of people only wanted free speech for views that they agreed with."

"My students are as good as ever, and maybe better than ever. You come to my lectures, and you'd be amazed at the quality of the questions asked."

to address the students on this sensitive issue unless they got someone to rebut me.

This was in December of 1961, and at that point I decided this university was not deeply committed to free speech. So a couple of years later, when some students came to me and said, "We are campaigning on behalf of free speech," they found a sympathetic listener. I became extremely active on behalf of the FSM. In fact, I guess I was the first regular faculty member to come out for the FSM.

My disenchantment with student radicalism came not because of the FSM but because of the events that occurred afterwards. After the FSM abolished itself, there was this sense of expectation of the '60s [activists] that somehow they were going to revolutionize society and overthrow capitalism and do all kinds of things that I did not want. I wanted free speech. But I discovered that there were a lot of people who, when they got free speech, wanted a whole lot of other things that had nothing to do with free speech. Truth to tell, some of them didn't much care about free speech. They only wanted free speech for views that they agreed with.

So I was then placed in an awkward position: I thought that the forces that had become unleashed by the '60s were really threatening to the university. We wiped out the old chancellor and the old system of authority—totally destroyed it. So the new chancellor asked me if I would come in and work in his administration as his adviser on student affairs, and I did for two years. And that was much harder than the FSM, because that's when we had to put the revolution back in the bottle. You cannot run a major university on the principle of permanent revolution.

The result of that was that I lost a lot of my old friends. They wanted to keep the revolution going. I did not. I thought, one revolution is enough. But not everybody agreed with me, and there were a lot of tense times as a result of that. We did, however, succeed.

In '69 there was an off-campus event—the People's Park debacle—that really was not an on-campus student event. That was a battle primarily between the nonstudent element living on the south side and the university, and especially those state authorities when Reagan came in with the National Guard. But the battle for academic control of Berkeley had been won by '67. So what happened in Paris and Columbia and Harvard and Stanford and a whole lot of other places occurred after what had happened there.

Reason: What do you think of the prospects for the future?

Searle: I left my crystal ball in my other pajamas. (Laughter) I don't know which way it's going to go. I have a sense that the present generation of undergraduates just thinks all those old '60s ideas are ridiculous.

I think that the movement of the '60s has done a lot of long-term, permanent damage, in certain departments, because they gave up on their educational mission. Certain departments, especially in literature and cultural studies, are, as far as I can tell, permanently demoralized. But in the departments that I deal with most directly there has been almost no effect. The philosophy department today is pretty much the same kind of philosophy department we had here 30 years ago.

Reason: Your direct experience is positive?

Searle: My students are as good as ever, and maybe better than ever. My perspective is skewed by the fact that I happen to get really superior students. I teach very difficult upper division courses, and I get the most self-selected bunch of students in the university, because nobody takes the courses who isn't highly motivated. You come to my lectures, and you'd be amazed at the quality of the questions asked.

But I don't teach many large freshman courses. When I did a few years ago I found I couldn't teach at the level that I could when I started teaching here in 1959. And the reason was that I could not take for granted the cultural references. I couldn't assume that everybody knew who Plato was. In 1959 the freshmen hadn't read Plato, but they had heard of him. But by, say, 1975, you couldn't assume that.

Also, affirmative action had a disastrous effect. We created two universities during affirmative action. We had a super-elite university of people who were admitted on the most competitive criteria in the history of the university, but then we had this other university of people who could not have been admitted on those criteria, and who had to have special courses and special departments set up for them.

Now affirmative action meant two completely different things. When it first started out the definition was that we were going to take affirmative actions to see that people who would never have tried to get into the university before would be encouraged and trained so that they could get admission. I was all for that—that we were going to get people into the competition who would otherwise not have been in the competition. What happened though, and this was the catastrophic effect, is that race and ethnicity became criteria not for encouraging people to enter the competition, but for judging the competition.

But now a lot of that is changing. The idea that we're going to admit people just on racial and ethnic criteria, we've given up on that. Now we're trying to get people prepared to compete in the university, and that's a good thing if we can do it. ◆

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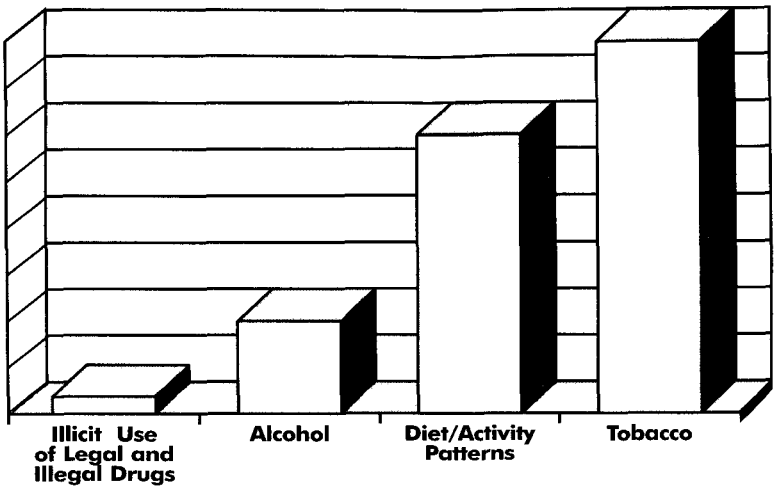
Estimated Causes of Preventable Deaths*



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Does jailing drug users make more sense than jailing over weight people and smokers?

* Estimated deaths attributed to: Illicit Use of Legal and Illegal Drugs - 20,000; Alcohol - 100,000; Diet/Activity Patterns - 300,000; Tobacco - 400,000.

Source: *Substance Abuse and Mental Health Statistics Source Book 1998 citing 1990 figures.* (Washington, DC: Department of Health and Human Services). Pg. 218

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The Broken Blue Line

How to start a riot

By Jesse Walker

You've heard of gun control? In December, the man who runs Seattle dreamed up the bright notion of *gas mask control.* With tear gas wafting through his downtown streets, Mayor Paul Schell declared a state of emergency, imposing not just a curfew and a no-protest zone but a ban on the private possession of gas masks. This was no toothless restriction: Several people—it's useless trying to get a precise count—were actually arrested for breaking the rule. Far fewer people were arrested for smashing windows, looting stores, or otherwise breaking laws with a foundation more solid than a last-minute mayoral fiat.

The media love a simple story, and the prevalent account of the Seattle riots is simple indeed. Thousands came to Seattle, the tale goes, to protest the meeting of the World Trade Organization. Most of the marchers were peaceful, but there was also a handful of violent "anarchists," who started smashing store windows. Soon, local criminals joined the fray, looting the downtown shops. The police were poorly prepared and understaffed, and were unable to keep the looters from running wild. Under pressure from federal officials, Seattle declared an emergency, called in the National Guard, and let the police cut loose. The next day, the cops went overboard, beating even peaceful marchers and innocent bystanders.

A straightforward narrative, but not an entirely accurate one. According to several witnesses—demonstrators, delegates, journalists—police violence broke out on the first day of the conference, not the second. It was directed not at the window smashers but at a knot of protesters blocking delegates from entering the Seattle Convention Center (a few of whom were also spitting on, and throwing things at, delegates and cops). Around 10:30 or 11 that morning, the police started using tear gas to disperse the crowd, which was pressed up against the police line. Unwisely, the cops threw the gas canisters *into* the crowd, over people's heads, thus putting those at the front of the mass in a double-bind: Run forward, toward the police, or run backward, toward the gas. Needless to say, the scene only grew more chaotic.

Trouble Brewing: Protesters block a police line from moving forward in a downtown Seattle intersection. Demonstrators tried to block all entrances to the World Trade Organization conference on the first day.

As for the vandals, they had been running unchecked all morning, with nary a peep from the police. "The cops thought their job was to watch the protesters," comments Jessamyn West of the Direct Action Network. "On day one, the cops were just sitting there like dorks. That created a sense of lawlessness: I think all the troublemakers saw the cops ignoring them and thought they could go to town."

This deliberate inaction was not limited to the protest area: According to the *Seattle Post-Intelligencer,* police ignored several calls for assistance from around the city, so focused were they on the events downtown. One woman, discovering someone had broken into her house, called 911—and was told to call back once the trade meeting was over. With the police unwilling to stop the vandalism, other protesters filled the breach, blocking shops and trying to restrain the window breakers.

The next day, of course, the cops were a lot more active: They gassed whole blocks, fired rubber bullets, and beat bystanders and peaceful protesters. This did not, however, stop the looting: Indeed, far from being more secure, some business owners were gassed in front of their own stores, according to their testimony at a post-WTO city council meeting. The police arrested people almost indiscriminately, with several journalists getting caught in the dragnets. In the evening, they chased a bunch of demonstrators out of the no-protest zone—then kept chasing, crossing Interstate 5 and entering Capitol

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Hill, a hip neighborhood and shopping district. The result was chaos, with police attacking locals outside their homes and on their way home from work.

Why were the police even *in* Capitol Hill? No one seems sure. "From what I hear, there were only one or two windows broken at all on Capitol Hill," comments Rich Lang, a real estate agent who lives in the neighborhood. Lang is in a position to know: He's the president of the Capitol Hill Stewardship Council and a former president of the Capitol Hill Community Council, and he has been active in neighborhood affairs for about 10 years. He wasn't involved with the demonstrations downtown; he's mad at the police for local reasons.

"There were all these police across the street from Starbucks, and they weren't doing anything," he exclaims. "Why didn't they try to stop the people who were trashing the place instead of tear gassing the neighborhood?"

None of this is to excuse the violent fringe of the protests, let alone the apolitical thugs who joined and perhaps dominated the shop-smashing spree. (Of the handful of people arrested for looting, all were Seattle locals and all had criminal records.) It's also important, though, to make distinctions within the protest community. Many demonstrators joined local volunteer crews to clean up the damage. Two days after the last looting spree, local activist Troy Skeels notes, "The city was turning away cleanup volunteers because there was nothing left to clean up."

Of course, some Seattleites didn't want anyone tying up the streets, whether or not they were peaceful. "I share the organizers' objection to the WTO's structure, purpose, and policies," one downtown worker told me. But, she added, "I think it was a big stupid to try and shut down the meeting. ...By the time I'd spent 90 minutes trying to get to work Tuesday, I'd have fucking joined the WTO if they'd had open enrollment." Still other locals turned into riot tourists, coming downtown to watch the melee at closer range. "I kept seeing people I knew who weren't very political," comments West. "I'd ask them why they were there. They'd say, 'We just wanted to check out the scene.'"

Nor is everyone upset with the police.

AT WHAT COST?

A POSTMORTEM ON THE BALKAN WAR

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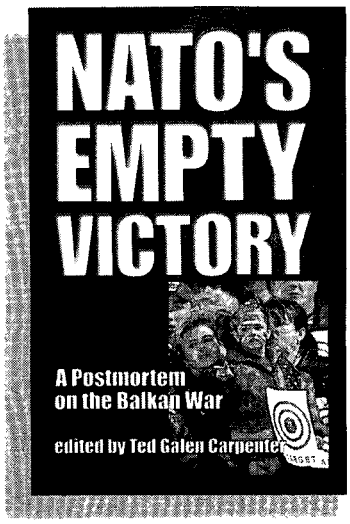

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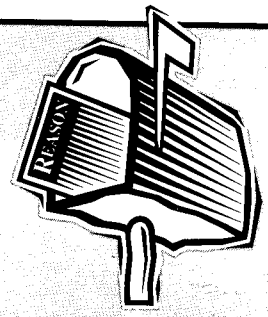

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Emily McGee, attending as a correspondent for *CEI UpDate*, got gassed along with everyone else. Nonetheless, she reports, "In general, the police behaved admirably.... The majority of them did a very difficult job as best they were able." She grants that there were "incidents of the police behaving in an atrocious fashion," but feels most of the blame lies further up the chain of command.

Indeed, the chief of police has resigned in the wake of the street battles, with the city promising to investigate just where things went wrong. With that report pending, two lessons already seem clear:

Beware of police preaching crowd control. It seems strange that the police would beat bystanders, lock up journalists, and gas whole neighborhoods, while leaving it to ordinary citizens to prevent vandalism and looting. But it actually makes a perverse sort of sense. The officers were told to guard the convention center and control the crowd, not to protect people and property. They were given virtually no flexibility to respond to other events: On the first day of the conference, some police reportedly explained that they could not cross the street to stop some vandals because that would mean leaving their posts. On day two, the officers may have behaved differently, but they continued to treat civilians as little more than a crowd to be contained.

On day one, no one could get arrested. On day two, anyone could get arrested. The crowd was collectively innocent or collectively guilty; individual wrongdoing was virtually irrelevant. This is the logic of a police state.

Beware of boosters chasing cameras. "For months, we'd been getting news reports and FBI warnings about what to expect in Seattle," says Greg Conko, a delegate from the Competitive Enterprise Institute. "If *we* all knew to expect rioting and the like, why didn't the Seattle government?" An Australian delegate posed exactly that question to a police officer toward the end of the meeting, with Conko present. The officer replied, "The mayor and governor just heard what they wanted to hear."

They sure did. Like many mid-sized metropolises, Seattle is cursed with an elite hell-bent on making the town a "world-class city"—a code phrase for pouring public money into downtown amenities. Some Seattleites are upset with the cops, some with the protesters, some with the trade organization. Todd Matthews, managing editor of the biweekly paper *Real Change*, is mad at Mayor Schell and at Patricia Davis, the president of the Port of Seattle Commission. "I was pissed because they brought it here," he says—"it" being the trade conference. "It was complete ego that they brought it here, the chance to be on the cover of every newspaper as the mayor of the city that was hosting the WTO." By inviting the conference and dismissing the chances of violence, Matthews argues, "the commissioner and the mayor put the citizens at risk to advance their political careers. It's a personal snub to the citizens of Seattle."

That doesn't quite explain everything: The police certainly knew that violence might break out during the conference, and they issued warnings to that effect to the very same downtown stores they failed to protect. Together with the conference's other mysteries, that inconsistency has fueled a lot of conspiracy theories, mostly to the effect that the vandals, or their leaders, were agents provocateurs, and that police higher-ups *wanted* a riot to break out.

A likelier possibility, though, is that the city's political authorities simply ignored the police department's warnings. They just didn't want to think about riots, lest they spoil Seattle's militantly mellow image. In Matthews' words, "These guys put the *ass* back in *world-class city.*"

With political leaders unwilling to think about their pet projects' consequences and police unwilling to make the most basic distinctions between guilt and innocence, the turmoil was almost inevitable. But neither the politicians nor the police seem to have learned their lesson. To this day, Commissioner Davis says she doesn't regret inviting the WTO to town. "Seattle is an international city," she has explained. "This is what we do."

And the police? The next time the WTO wants to hold a meeting, Assistant Chief Ed Joiner told reporters, it should do so in a city with a bigger police force. Or, he added, in a country with a military government. ◆

Jesse Walker (jwalker@reason.com) is associate editor of REASON.

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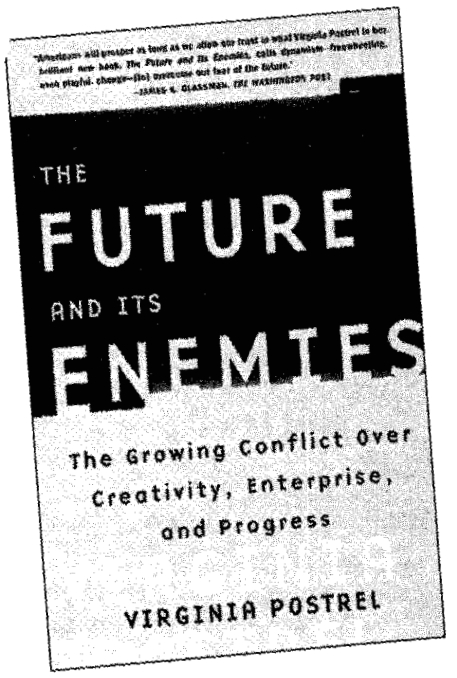

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Pot Stickers

Indiana tries to punish a marijuana grower twice.

By Stephen F. Hayes

David Sumpter was hungry. The refrigerator in his trailer home was bare, and his wallet was empty. So Sumpter, a small-scale Indiana vegetable farmer who also dabbled in marijuana, asked his common-law wife's 6-year-old son to join him on a short fishing trip at nearby Elk's Lake. Sumpter remembers October 19, 1993, as chilly, and the fishing as futile. "We wasn't gettin' no bites," he says. After 15 minutes of fishing and freezing, they packed up their equipment and headed home.

As he drove along Interstate 64 just north of the Indiana-Kentucky border, Sumpter recalls, he spotted a freshly killed deer on the side of the road. To most people, it was road kill; to Sumpter and his family, it was dinner.

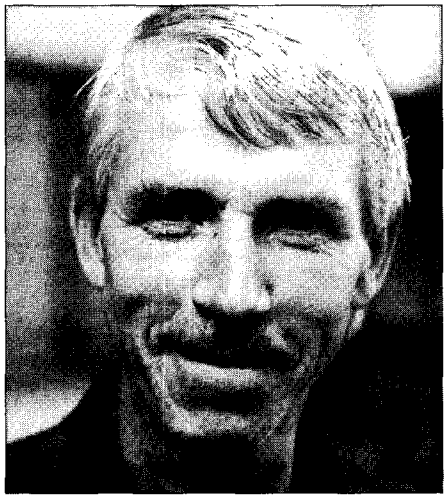
Sumpter knew the doe had been struck only minutes earlier because, he says, "blood was still running out of her nose." Sumpter packed the carcass into his 1978 Toyota station wagon and took it home to clean it. Once home, he dragged the deer behind his trailer, down a path that leads to a shallow creek, where he gutted the animal. He kept the meat, storing it in his freezer, and cut off one of the hooves as a good luck charm for his common-law wife's daughter. She didn't want the deer foot, so Sumpter threw it away. With it, it seems, went his short-lived good fortune.

David Sumpter's troubles began with road kill and haven't ended yet. In the intervening six years, he has received and served a criminal sentence for marijuana possession. The state of Indiana isn't through with him, though; it wants to punish him again for the same offense. Officially, the state is trying to collect a "controlled substance excise tax," under a law that the Indiana Supreme Court declared unconstitutional in 1995.

Two days after he tossed the deer hoof, as Sumpter was fishing at Elk's Lake, he was approached by an Indiana conservation officer who had noticed blood and hair on Sumpter's car. According to his attorney, Sumpter told the officer how he had serendipitously found the deer. The officer was dubious, however, and called a second conservation officer to search Sumpter's property for the deer's remains so they could verify that it had been killed by a car.

The second officer, Mac Spainhour, inspected the area surrounding Sumpter's trailer. Near the path leading down to the creek, as he searched for deer parts, Spainhour happened upon 30 to 40 marijuana plants, each about one foot high. Alerted to the marijuana by the conservation officers, a Clark County deputy sheriff obtained consent from Sumpter for a search of his trailer. There he found more plants and harvested marijuana, amounting to 17 pounds of pot, according to the sheriff's report. Sumpter and his attorney disputed that claim, arguing that the state tested only three pounds.

The 46-year-old Sumpter says he grew the marijuana both to smoke it and to sell it. "I smoked it mostly," he says, "way more than I sold it." Sumpter says he smoked pot to alleviate the pain he experienced as a result of two serious accidents in the early 1990s that had left him disabled. Since 1990, he has had one operation to remove a disk from his neck and four to repair a leg that was crushed when he was run over by a truck.



Luckless Hoosier: David Sumpter

Sumpter also sold small amounts of pot—as a last resort, he insists—to help support a family with growing expenses. He and his common-law wife, who had a low-paying job at a cookie shop, were raising her four children from a previous marriage. Although he now receives disability payments from the state, the money didn't begin arriving until after his arrest. "I'd sell a bag every once in a while, mostly down in Louisville," Sumpter says. "When I sold it, I was just feedin' my family. That's all I was doin'."

Sumpter plea-bargained his case, and ultimately several of the charges were dropped or reduced. He served six months of in-home confinement and three years of probation. His criminal case ended in 1997, with the completion of his probation. But Sumpter's legal woes were just beginning.

A law passed by the Indiana legislature in 1992 required drug dealers to pay a "controlled substance excise tax." If that sounds strange, it is. In essence, the government says to its citizens, "We'll punish you if we catch you selling pot." And then, with a wink and a nod, it adds, "If you do sell pot, tell us, so we can profit from it too." More than 20 states have some sort of tax on illegal drugs. For years, the state of Arizona charged $100 for a "Cannabis and Controlled Substance Dealer's License." (In 1996, an Arizona judge threw out the case against an accused drug dealer who had purchased one of these licenses, concluding that the state could not punish an activity for which it had granted permission.) Other states, including Indiana, issue "tax stamps" that dealers can attach to drug packaging to verify that they have paid the levy.

According to court records, immediately upon Sumpter's arrest, before he was

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charged, he was assessed a controlled substance excise tax of $315,972. That assessment was doubled as soon as it was levied, as a penalty for his failure to pay the tax in advance. Within hours of his arrest, Sumpter found himself more than $630,000 in arrears to the state of Indiana. His attorney, David Mosley, immediately filed a "protest of assessment" on behalf of Sumpter, but the administrative hearing did not take place until March 2, 1999, some six years later. (Indiana Deputy Attorney General David Arthur, who is representing the state Department of Revenue in the case, says the delay was caused by an overwhelming caseload.) In the interim, Sumpter had served his criminal sentence.

Mosley believes that by pursuing the drug tax now, after Sumpter has been punished for his offense, the state is violating the Fifth Amendment's prohibition against double jeopardy: "No person shall...be subject for the same offence to be twice put in jeopardy of life or limb." As the U.S. Supreme Court explained in *Department of Revenue of Montana v. Kurth Ranch*, a 1994 decision that overturned a similar drug tax in Montana, "The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense."

After that decision, in the 1995 case *Bryant v. State of Indiana*, the Indiana Supreme Court found the state's drug tax punitive in nature and forbade levying a tax assessment and pursuing criminal protection in the same case. This finding does not help Sumpter, however, because the decision doesn't apply retroactively. Even if it did, the state argues, the tax could not have violated the Double Jeopardy Clause because it was assessed before the criminal sentence was imposed.

Since *Kurth* and *Bryant*, Indiana has changed its drug tax law several times. But Indianapolis attorney Andrew Maternowski, an expert on drug prosecutions, believes the law is still unconstitutional. "Effectively, *Kurth Ranch* is avoided because they are infrequently using the [drug tax] at this time," he says.

In addition to the Double Jeopardy Clause, Maternowski argues, the drug tax violates due process rights. "It is a criminal sanction," he says, so defendants "should be entitled to the same protections as criminals. But there's no trial, no right to evidence, no court findings, no anything. They have no rights at all. Instead of a presumption of innocence, the assessment [rests on] a presumption of guilt." Furthermore, "bad searches don't matter....Police can say, 'Screw the Fourth Amendment; we want the money,' and even if it's a bad search, and the criminal case is thrown out, the tax can be assessed." Police receive 30 percent of assessments based on information they provide.

One recent change Indiana made in its continuing effort to get around the *Kurth* and *Bryant* decisions requires prosecutors to notify the Department of Revenue when they don't intend to pursue a drug case. Maternowski worries that such collaboration will lead to disparate treatment based on suspects' economic status. "Envision a situation where the suspect is arrested with a large quantity of marijuana in a traffic stop that is constitutionally questionable," he says. If the person is wealthy and prosecution is uncertain, the state has an incentive to collect the tax. (The stated goal is revenue, not punishment.) But if the person is poor, it makes more sense for the state to attempt a prosecution than to try collecting money from someone who has none. In short, the rich pay the tax, and the poor go to jail.

Sumpter may end up doing both. Mosley says the state has offered to settle for $30,000. Sumpter says he arranged for enough family loans to enable him to make a counteroffer of $10,000. Arthur, the deputy attorney general, says he has no recollection of such a counteroffer.

Using either Arthur's figure or Sumpter's, it has hardly been cost-effective for Indiana to pursue someone who has no resources to pay the tax. A "Warrant for Collection of Tax" dated August 25, 1999, has a handwritten "balance due" figure of $789,881. This includes a "collection fee" of $31,597—more than $1,500 above the state's last settlement offer.

Remember, this money would come from a man who raised suspicion by scavenging road kill while returning from a hunger-motivated fishing trip. No matter, apparently. "If he violated the law," says Arthur, "he violated the law."

When people with no money are forced to pay the drug tax, says Maternowski, "they essentially become indentured servants to the state. They're kicked off family farms. Their paychecks are [garnished]." If the courts determine that Sumpter still owes the money, the Department of Revenue will have the authority to seize what little property he has. "If we lose, that gives them the right to everything Dave owns," says Mosley, his lawyer. And that's not much. Sumpter's only real asset is his used trailer home.

When people with no money are forced to pay the drug tax, says Indianapolis attorney David Maternowski, they become indentured servants to the state.

A hint of pride emerges as Sumpter describes his one prized possession. "It's a real nice trailer, an '84," he says. "I got it used in '90 for $41,000." He adds, "I'm pretty poor. If it wasn't for selling fruits and vegetables—tomatoes, peppers, and a few cantaloupes—I wouldn't have nothing."

Arthur says only Gov. Frank O'Bannon can make policy decisions that would affect the Sumpter case. Unlike Arthur, who knows the law and knows the case well enough to speak extemporaneously about it for 45 minutes, nobody in the governor's office has heard of Sumpter.

Sumpter hopes his assessment will be dropped. "I don't understand how they can do it," he says. "It don't make no sense. I just want to move out of Indiana."

His native Indiana isn't the only thing Sumpter doesn't like anymore. "I used to love deer," he says. "I used to think deer pictures were pretty and everything. I had them everywhere. Now, I just want to run over every deer I see on the road. They drive me crazy." ◆

Stephen F. Hayes (Hayes_Stephen@hotmail. com) writes for The Hotline, National Journal*'s daily online political briefing.*

Gold Bugs

Class action lawyers discover Silicon Valley.

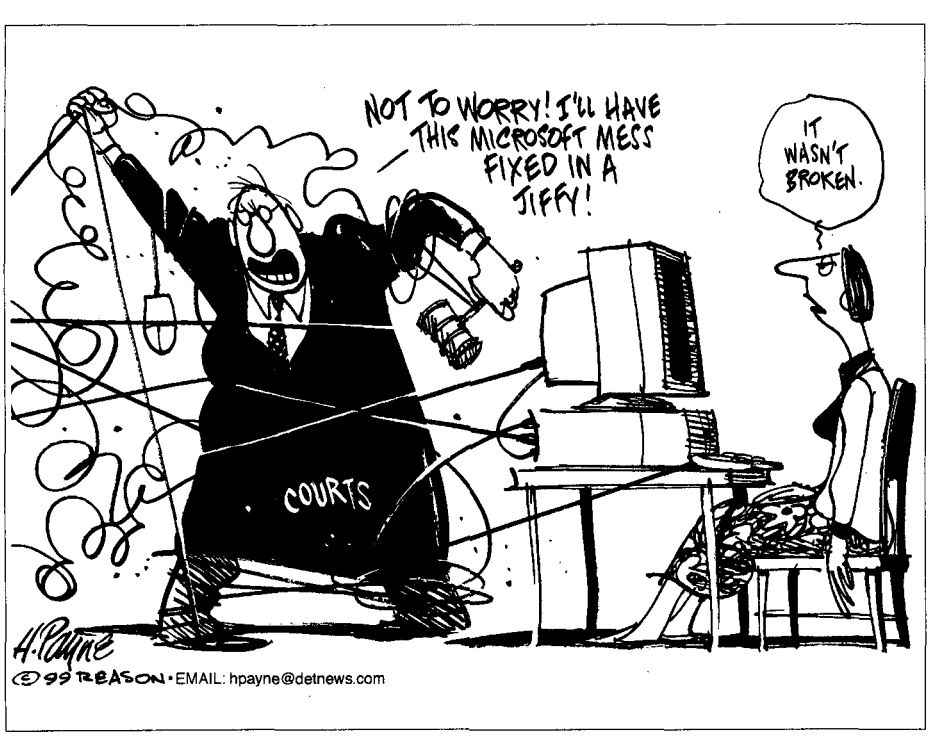
By Walter Olson

In October the Toshiba Corporation shocked many observers by announcing it had agreed to pay an estimated $1 billion to $2 billion to settle a hitherto obscure class action lawsuit involving its popular laptop computers. The suit had charged that a defect in the machines might cause users to lose data while saving files to their floppy drives.

Many long-term Toshiba owners professed themselves unfamiliar with any such glitch, but plaintiff's lawyers had showed it could happen if someone set up one of the machines just so. Under the terms of the settlement, the company agreed that it would post on the Web a software fix that it said remedied the problem; make available coupons or rebates valued at $100–$300 to the owners of an estimated 5.5 million laptops; and donate some older equipment to charity. And one thing more: The settlement included $147 million in legal fees for Reaud, Morgan & Quinn, a very successful plaintiff's firm best known for asbestos and tobacco work, which had filed the action in its hometown of Beaumont, Texas.

Talk about free money falling into one's lap! "And the beauty of it is," commented *National Journal* legal columnist Stuart Taylor, "that my Toshiba works just fine! ...So remote is the possibility that our laptop will ever seriously malfunction that I may not get around to downloading the free software 'patch' that Toshiba has provided as part of the settlement."

Indeed, many laptop owners these days never use their floppy drives at all, relying instead on downloads of data through modems or ports in combination with preloaded software. As for the rest, Toshiba said it managed to re-create the problem in the lab only under rather artificial conditions, as when its experimenters tried to save files "while simultaneously doing one or two other intensive tasks, such as playing a game or watching a video." In fact, the *Los Angeles Times* reported, "no consumer ever complained of losing data as a result of the glitch."


NOT TO WORRY! I'LL HAVE THIS MICROSOFT MESS FIXED IN A JIFFY!
IT WASN'T BROKEN.
COURTS
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HENRY PAYNE

The Toshiba settlement was followed within days by the filing of similar lawsuits against other PC makers, including Hewlett-Packard, Compaq, NEC Packard-Bell, and e-Machines Inc. Compaq, for its part, said it could not be liable because its particular design had avoided the Toshiba glitch. In any case, within days the laptop suits had been overtaken in the headlines by another and far bigger legal pile-on: the mass filing of class action antitrust suits against the Microsoft Corporation by private attorneys tagging along after federal judge Thomas Penfield Jackson's Redmond-arraigning "findings of fact." These suits, reported *The Washington Post*, aim to make Bill Gates' enterprise "the next Philip Morris," pinned down for years to come in courtrooms around the country; indeed, they've attracted the participation of lawyers who grew rich in the previous binge of expropriation, the "tobacco round." Collectively they're expected to demand what will amount to stupendous sums of money, mounting at least into the many tens of billions.

Together these events signal a development that was bound to arrive sooner or later: America's high-tech industry is now officially under assault from America's *other* most successful industry, the litigation business. If we're lucky, Silicon Valley will now realize that it's in the same boat with conventional businesses that have come under courtroom attack—and perhaps begin to think about how best to unite in resistance.

To see how Toshiba could be waylaid on the dark legal streets of Beaumont, we need to retrace a bit of history. For a very long time, the common law of England and America mostly disallowed the sort of device we now know as the class action. To be sure, there were some limited procedures, originating in the courts of equity, by which aggrieved litigants could join together to pursue a lawsuit. But the restrictions were many and strin-

gent: The claimants had to have suffered an essentially identical injury, each had a right to be individually notified of what was going on in his name, and so forth.

In recent decades, with America taking the lead, the class action device has been turned into something far different. One prominent advance was the "opt-out" model, in which everyone in a class would be enlisted as a litigant unless he went to the trouble of asking not to sue—much better, everyone agreed, than the old "opt-in" model, where individual clients were expected to decide affirmatively to take part. Notification rules fell by the wayside as well, so that millions of consumers might never even realize that suits were

"If I don't bring the entire lead paint industry to its knees within three years, I will give them my [120-foot] boat," billionaire class action lawyer Ron Motley recently told the *Dallas Morning News*.

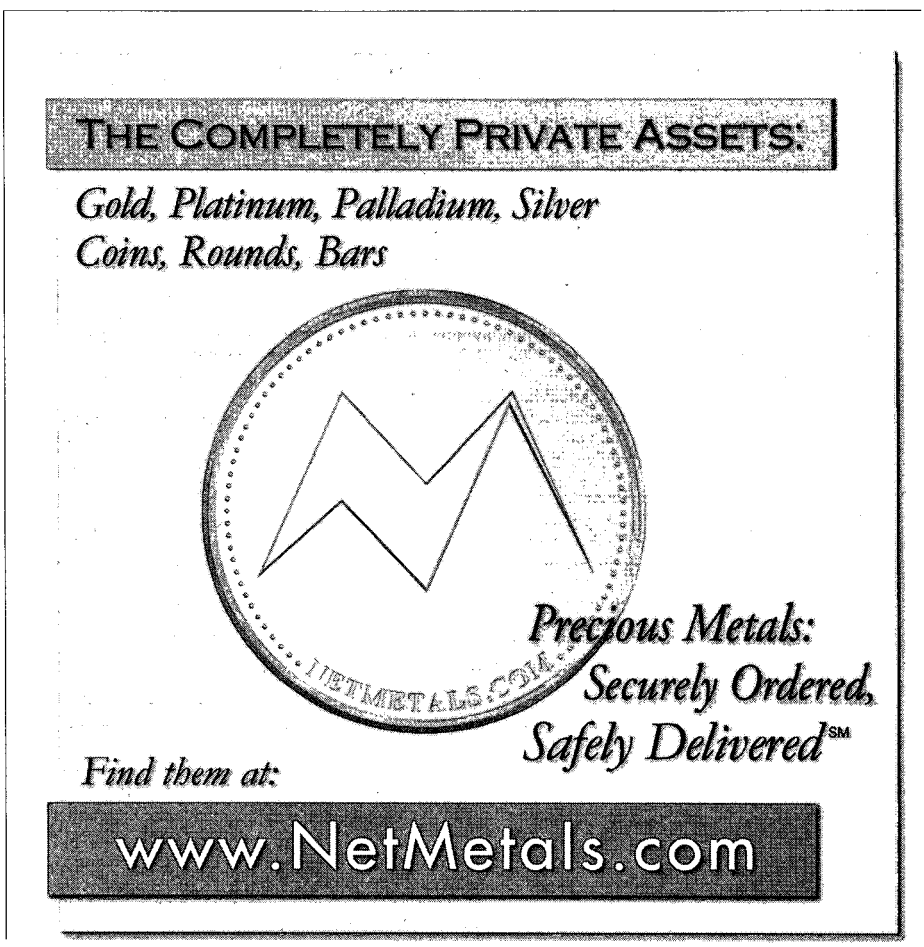
being filed in their name. Requirements of uniformity of situation were relaxed, so that customers who'd been seriously vexed by some business practice could be roped into a single class with others who may not have minded it at all.

As requirements of "ripeness" and "actual injury" began to erode, it became possible to sue on behalf of some classes to whom nothing bad had happened, on the grounds that they risked having something bad happen to them in the future. In 1974 the U.S. Supreme Court did away with a rule that had required the organizing lawyers in many federal class actions to show a significant preliminary chance of winning on the merits. And increasingly, it came to be seen as perfectly acceptable for the action to be managed by and at the convenience of the lawyers, with clients serving as little more than pieces for them to move about on a chessboard.

At the same time, the class action (and litigation more generally) was being invested with a powerful ideological mission, that of bringing the business class to heel. Lawsuits could serve as a new and powerful method of extending the reach of regulation, with no need to get bogged down in the tedious schedules and obstructive procedures involved in prevailing on actual legislatures or regulatory agencies to adopt new measures. ("You don't need a legislative majority to file a lawsuit," boasts lawyer Elisa Barnes, who scored a big victory against gun makers in the now-famous Brooklyn case of *Hamilton v. Accu-Tek*.) At the same time, very much like a progressive tax system, litigation could redistribute vast sums of money toward undoubtedly deserving plaintiffs, a goodly share of which would of course have to be set aside for the lawyers' own accounts to lubricate the process and finance its continual expansion.

For its prescience in laying out the agenda of what was to come, it's worth digging up a copy of an old essay titled "Class Actions: Let the People In," published in the 1973 collection *Verdicts on Lawyers*, edited by Ralph Nader and Mark Green. The authors of the essay—Beverly C. Moore Jr., described as "a public interest lawyer in Washington, D.C.," and former Sen. Fred Harris, a populist who made a run for president and also served as chairman of the Democratic National Committee—drew a remarkably ambitious blueprint for using the class action to pursue a wide range of complaints against business.

Moore and Harris compiled a list of no fewer than 24 different industries and categories of business they considered ripe for class action suits. Cigarette makers were on the list; so were makers of alcoholic beverages and producers of fatty and sugary foods. Companies committing antitrust violations and unfair trade practices (that would cover Microsoft) were prominent targets too, along with industries allegedly responsible for occupational illness, which might nowadays include keyboard makers chargeable with the costs of carpal tunnel syndrome. And on and on: Developers would get sued for the costs of "sprawl"; pharmaceutical makers for the costs of adverse reactions to medicines, whether or not due to anyone's negligence; and automakers for the costs



of all highway accidents of whatever origin. On the list, too, were class actions over consumer durables that did not perform as reliably as they might—a category that would eventually include those 5.5 million Toshiba laptops.

In the quarter century since Moore and Harris unrolled their blueprint, the class action bar has gathered into its hands a remarkable degree of power to set the national agenda, taking on issues such as gun control, race relations at big companies, and World War II reparations. The announcement this fall of a big class action offensive against HMOs destroyed $12 billion worth of stock value in a single day, and it's now widely assumed that the lawyers will have a place at the table in negotiating any future revamp of the rules governing health care.

"If I don't bring the entire lead paint industry to its knees within three years, I will give them my [120-foot] boat," tobacco billionaire Ron Motley recently told the *Dallas Morning News.* Auto insurers learned that they might have to disgorge billions following an October verdict in which lawyers convinced an Illinois jury that it was improper for the insurers to have bought generic (as opposed to brand-name) replacement parts in repairing their policyholders' crashed cars, notwithstanding endorsements of that practice by state insurance commissioners and leading consumer groups.

Lots of money is undeniably changing hands; but are consumers actually benefiting? That's a harder question to answer. Some policyholders win, but others lose, when an insurance company is obliged to pay higher prices to buy genuine GM parts and then translates those higher outlays into a rate hike at renewal time. Other class action settlements result in the distribution of coupons with a high face value (thus allowing the lawyers to claim high fees) but not much real value, for the same reasons that a Sunday paper filled with $50 in coupons is not really worth $50.

In plenty of cases it's obvious that the lawyers' interest is in fact at odds with the expressed wishes or interests of their purported clients. For example, various current suits seeking class action status charge companies with unlawfully having promoted or facilitated gambling; some of these have been filed on behalf of customers who've run up debts at offshore Internet casinos and say credit card companies were wrong to advance them the money to do so. Should they prevail, they may obtain some transient "relief," such as forgiveness of interest or principal, but the wider effect will be to force the credit card companies to withhold credit from many other willing borrowers in the class. If that counts as legal representation, what would legal opposition look like?

Which brings us to the question of who really gains and who loses should courts begin handing out damages liberally over computer failures. Very few high-tech products—hardware, software, Web applications, you name it—are immune to glitches and crashes, particularly not in the versions provided to early adopters before the bugs are worked out. If crashes are eventually seen as compensable, users naturally will tend to arrive at a high valuation of what they think their crashes have cost them. Even glitches whose only cost is lost time and annoyance add up fast as sources of potential compensation. Who hasn't wasted at least a couple of hours struggling with the infelicities of the typical $60 software program?

In fact, it wouldn't require invoking an exaggerated valuation of the cost of time to imagine a typical user as experiencing the aggregate impact of bugs and klutzy design in a $60 program as an implicit cost far in excess of the original $60 outlay. If silicon-economy providers are indeed to be forced to insure their customers against that risk, they'd better take care to build a premium for such insurance into the price of the product—which means charging a good deal more than $60 in the future. Maybe they'd better charge $250, in fact, and set aside the surplus as an escrow against future claims. With tempting settlements like Toshiba's now on the table, you can bet teams of clever lawyers are sifting through bug reports in search of the next likely targets.

There is one legal principle that stands between Silicon Valley and the series of unpleasant effects that would result from an extension of liability, ranging from steep price hikes on techie components to slower (i.e., more "careful") introduction of new products and applications. That legal principle is the good old one known as "freedom of contract."

Indeed, makers of computer products have long tried to protect themselves from litigation by way of "shrink-wrap" disclaimers through which customers agree, as a condition of using the product, not to pursue open-ended liability claims later (lately updated to "first-screen" disclaimers in which they click "OK" to an agreement not to sue before being given access to the product).

Trouble is, the plaintiff's bar has never conceded the validity of shrink-wrap disclaimers; in fact, it vigorously disputes them. It points out (correctly) that such disclaimers would be viewed as virtually unthinkable in the case of many older industries: Imagine if Chrysler tried to shrink-wrap a minivan, requiring buyers to promise not to sue for unlimited damages over later discontent with the vehicle. Why, it would be...it would be a return to the days of laissez faire!

On the strength of a barrier as thin as cellophane may depend the difference between the relatively unlitigious Silicon Valley of today and an overcautious, overlawyered version that might replace it a decade from now. If we're to avoid that prospect, someone from the Valley is going to have to stand up for the principle of freedom of contract, *as* a principle. Any nominees?

If we're to avoid an overcautious, overlawyered high-tech sector, someone from Silicon Valley is going to have to stand up for the principle of freedom of contract, *as* a principle. Any nominees?

Contributing Editor Walter Olson (wo@walterolson.com) is a senior fellow at the Manhattan Institute and the editor of Overlawyered.com.

Preservation Instincts

By Ronald Bailey

Hard Green: Saving the Environment From the Environmentalists: A Conservative Manifesto, by Peter Huber, New York: Basic Books, 208 pages, $25.00

This manifesto for a "conservative" environmentalism by Manhattan Institute senior fellow Peter Huber is being promoted as an answer to Albert Gore's 1992 alarmist tract, *Earth in the Balance.* Huber, a *Forbes* magazine columnist and the author of *Liability: The Legal Revolution and Its Consequences* (1988) and *Galileo's Revenge: Junk Science in the Courtroom* (1991), is an excellent writer and provocative thinker. He begins his analysis in this book by making a useful distinction between Soft Green and Hard Green.

"Soft Green is the realm of huge populations (molecules, particles) paired with very weak (low-probability) or slow (long time frame) effects," Huber writes. "Soft Green is the Green of the invisible, the Green of the highly dispersed or the far future. To believe in Soft Green you must either be a savant or put a great deal of trust in one. To the Soft Green, the model is everything."

Soft Greens worry about largely invisible threats, such as parts per billion pesticide residues in food, or about dangers that are distant and vague, such as global warming or exhaustion of resources. Huber argues that Soft Greens can justify intervening in any human activity on the basis of their all-seeing computer models. Soft Green environmentalism doesn't need tangible evidence of harm. The most notorious Soft Greens are Rachel Carson, the *Limits to Growth* crowd, Paul Ehrlich, and Al Gore.

"Hard Green was and remains traditional conservation," writes Huber. "To believe in Hard Green we merely have to love the outdoors, the unspoiled wilderness, forest, river, and shore. It takes no special expertise, no extraordinary discernment, and not much science. It requires no big model of the far future. All it takes is an eye for natural beauty, a reverence for life, a sense of awe for the boundless grandeur of creation."

Hard Greens aim to ameliorate environmental problems that are clearly visible, easy to touch and smell, and are in the here and now. They want to do things like preserve forests, protect landscapes, and abate noxious pollution. Hard Greens embrace the tradition of wilderness conservation championed by Teddy Roosevelt.

Soft Greens rely on what Huber calls "sandpile theory." In sandpiles, each additional grain of sand causes little change until at last one hits the pile at a critical point and the pile collapses in a catastrophic avalanche. No one can be sure which additional grain of sand (environmental stressor) will cause the catastrophe, so Soft Greens conclude that we should be very careful about adding any stresses at all. "The sandpile theory—self-organized criticality—is irresistible as a metaphor," enthuses Soft Green presidential candidate Al Gore.

"The truth is, sandpiles are too inherently complex for theories about them to yield any practical green advice at all," responds Huber. "Most of the time, there is simply no way to know in advance whether a nuke, a swamp, or a Buick has the behavioral characteristics of a sandpile or glob of honey. We can confidently label something a 'sandpile' only after we've seen the collapse."

The Soft Greens' sandpile theory un-

Natural Monument: Teddy Roosevelt, Peter Huber's model "Hard Green," takes in Yosemite with naturalist John Muir.

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derlies their worrisome faith in the so-called precautionary principle, which demands the impossible requirement that every human activity be proved safe before it is allowed to go forward. By subscribing to sandpile theory, Soft Greens can simply dismiss arguments that are based on past evidence and experience. If the facts don't fit the theory, that's just too bad for the facts. In the Soft Green view, naively insisting on evidence merely gives us hapless humans a false sense of security—the collapse is coming, but we have no way of knowing when.

Nothing is beyond the scope of Soft Green environmentalism because anything, as the computer models can be made to show, could be a sandpile. Sandpile theory justifies regulating everything from backyard barbecues and toilet tanks to nuclear power plants and the global atmosphere.

Hard Greens eschew complicated computer models and the speculative harms they generate for concrete things like pea soup smog and sludge-filled rivers. Hard Greens, according to Huber, want the government to define property rights over such pollution and then let private markets solve the problem. While Huber admits that the details of such schemes would be complicated, he argues that the principle is simple.

For example, governments could issue emission permits for all cars currently on the road. Car owners would possess the permits free and clear, and the permits would cover whatever level of pollution each car currently emits. When an owner goes to buy a new car, however, he will also have to buy the right to emit from someone who currently holds a permit. The result: "The market cannot create more permits. But it can create direct competitive substitutes: pollution abatement technology, procedures, and strategies. And so it does, driving the price of pollution abatement down steadily. On an ongoing basis, for new cars, pollution costs are fully internalized." Huber points to the current market in sulfur dioxide emission permits as evidence that similar schemes would work and insists that "many quite elusive externalities, from sewage to whales, can be internalized in this general way."

Huber points out that Soft Greens fear modern technology as both brittle (a sandpile) and overwhelming. Consequently they counsel humanity to cut back on the "overconsumption" that technology makes possible because it is supposedly unsustainable and destructive of nature. In their view, material poverty is good because it means that people are consuming less of nature.

Huber clearly demonstrates that the Soft Green fear of technology and economic growth is in fact profoundly anti-environmental in effect and leads directly to the destruction of nature. For example, many Soft Greens favor organic farming and producing energy by converting biomass or using windmills. These low-tech prescriptions would be disastrous for the natural world. By boosting farm productivity, modern, high-tech, chemically based agriculture has literally saved hundreds of millions of acres of land for nature; inefficient organic farming would have doomed millions of acres. The Soft Green energy prescription is especially destructive, since growing combustible biomass and building windmill farms would mean the clearing of millions more acres of land. Our modern energy system uses fuels—oil, gas, coal, and uranium—that are not derived from the biosphere, and thus it harms the natural world less.

By boosting farm productivity, modern, high-tech, chemically based agriculture has literally saved hundreds of millions of acres of land for nature; inefficient organic farming would have doomed millions of acres.

Huber is clearly right when he points out that poverty causes environmental damage while wealth protects the natural world. "The rich, not the poor, are the ones actively committed to conserving wildlife, forest, seashore and ocean," he writes. "The charge that the rich are the despoilers, the exhausters, the expropriators of the planet's biological wealth is simply false. Rich people did not invent slavery, they ended it. Rich people did not invent the oppression of women, they ended it. Rich people did not invent environmental destruction. The rich are ending it."

Even the most casual inspection of the evidence shows that the countries with the cleanest rivers, the clearest air, expanding forests, and the most protected wildernesses are the wealthiest countries with the greatest economic growth.

Huber treads perilous ground, however, when he argues that government can be used to advance conservative environmental goals, particularly the preservation of wilderness. "All in all, private conservation is, by a wide margin, the most important form of conservation we have," he acknowledges. That said, he hastens to argue that "at some point the vastness of White Mountains and Everglades, or river archipelagos and coral reefs and the sheer scope and scale of the most ambitious conservation objectives require a reach to match. That means the reach of local, state, and federal governments." Huber says government can play a necessary role expanding and protecting "the wilderness broadly defined—because the objective here is to see to it that in those places nothing much is done at all. Nothing is the one thing that big government is capable of doing quite well, and doing nothing is the paramount objective of conservation."

Government can, of course, buy land under the doctrine of eminent domain if taxpayers are willing to foot the bill. But the federal government already owns 28 percent of the land area of the United States, and Huber does not specify how much more he would like it to acquire. Furthermore, when Huber talks about "wilderness" he doesn't make clear distinctions between national parks, wilderness areas, national forests, etc. Ultimately he doesn't seem to want to "conserve" so much as "preserve" wilderness. He would limit human activity in his government wilderness areas to recreation only. By contrast, Huber's icon, ur-conservationist Teddy Roosevelt, wanted to conserve forests largely so that they could produce lumber in the future. In Huber's "conser-

vative commune" such productive activities would be forbidden.

It's an open question whether government conservation of wilderness is better or worse than private efforts. Although Huber might dismiss the vast private well-managed forests in Northern Maine or the rapidly expanding forestlands in the South as not wilderness enough, they function well ecologically and are superb havens for a huge variety of wildlife. Meanwhile, the history of federal land management is rife with failures. It was, after all, the Army Corps of Engineers that channelized, dredged, dammed, and drained all those rivers and wetlands. It was the Bureau of Land Management that deployed "range improvement" programs that ripped up native vegetation on thousands of square miles of land and offered below-market leases that ultimately encouraged overgrazing on its ranges. And as Alston Chase has amply shown in his book *Playing God in Yellowstone: The Destruction of America's First National Park,* federal managers of U.S. national parks, despite Huber's claim to the contrary, don't "do nothing" very well at all.

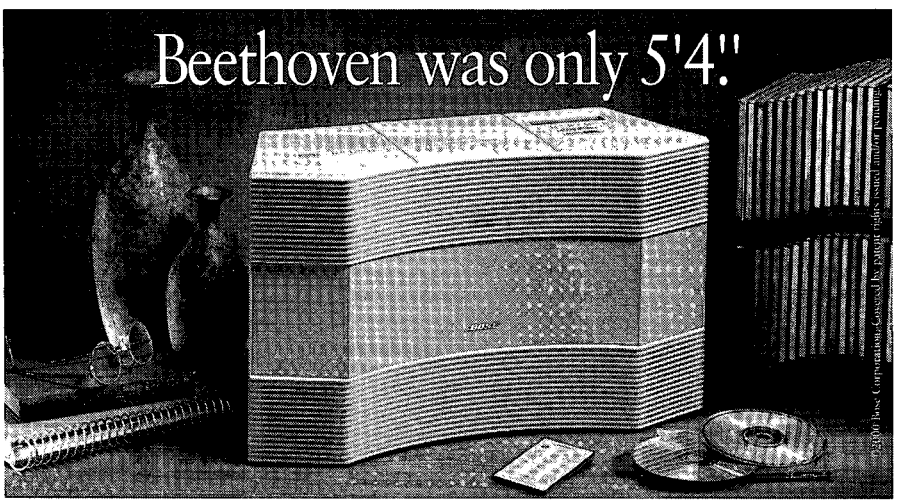
Huber acknowledges that political management has been problematic, but I suspect that because he is in a hurry to protect what he loves, he is willing to justify the use of government to promote the values he personally deems important. He apparently believes that without government efforts to preserve wilderness, we will drive willy-nilly into the "high-tech hell" of a future where nature will be stamped out beneath a technologically triumphant humanity. "In all likelihood... high-tech environmental hell is perfectly feasible, sustainable, and viable," Huber writes. "Humans multiply like grains of sand on the shore. The entire surface of the planet ends up like Manhattan, without Central Park. These thoughts are repellent, but that does not make them untrue. Our most likely future is a high-tech hell: comfortable, stable, sustainable, perfected in every way for the comfort of our species and no other."

Huber is so anxious to avoid the high-tech hell he predicts that he reaches for government power to stop it. Having donned his seer's hat, he then curiously castigates both neo-Malthusians and techno-optimists for making "big future" predictions, insisting that they are simply flip sides of the same determinist coin. It is true that neo-Malthusians such as Stanford University's Paul Ehrlich and Worldwatch Institute President Lester Brown make supposedly precise predictions about the coming catastrophic destruction of nature and human society. And on the basis of their models, neo-Malthusians claim that they know exactly what needs to be done and therefore should be given political power to avert the looming doom.

Of course, techno-optimists, including many of the *Wired* magazine crowd or so-called Extropians, also make forecasts about the future, but Huber's charge that they are as deterministic as the neo-Malthusians is too strong. Contrary to Huber's claims, most technological optimists don't generally prescribe ends. Like Huber himself, they prescribe means, and the means are essentially identical to Huber's: markets, property, and freedom.

As technology improves, we learn to do more with less, and we depend less on the living resources of nature. Already, increased agricultural productivity has enabled the expansion of temperate forests in the U.S. and Western Europe. And this could easily become a worldwide phenomenon, according to noted agricultural researcher Paul Waggoner. "If during the next sixty to seventy years the world farmer reaches the average yield of today's US corn grower, the ten billion will need only half of today's cropland while they eat today's American calories," concludes Waggoner in his article, "How Much Land Can Ten Billion People Spare for Nature?" in the summer 1996 issue of *Daedelus.* Similar trends can be seen with regard to levels of air and water pollution: As productivity increases, pollution levels fall. So in fact the technological progress celebrated by techno-optimists is arguably more likely to permit the flowering of a green paradise than it is to result in a Huberian "high-tech hell."

Nevertheless, Huber is far more right than he is wrong. As he shows, Soft Green programs and policies do imperil both the



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Ronald Bailey (rbailey@reason.com) is REASON*'s science correspondent and the editor of* Earth Watch 2000, *just published by McGraw-Hill.*

The Cogs of War

By Michael McMenamin

A Republic, Not an Empire, by Patrick J. Buchanan, Washington: Regnery Publishing, 300 pages, $29.95

Five Days in London, May 1940, by John Lukacs, New Haven: Yale University Press, 288 pages, $19.95

Wars almost never turn out as they were intended. NATO was the latest to learn that lesson in its bombing of Serbia, and is learning it anew while occupying Kosovo.

Consider this warning delivered in 1901 by Winston Churchill, then a 27-year-old member of Parliament recently returned from the Boer War, who lectured his elders on the folly of glibly contemplating a general European conflict: "A European war can only end in the ruin of the vanquished and the scarcely less fatal commercial dislocation and exhaustion of the conquerors. Democracy is more vindictive than Cabinets. The wars of peoples will be more terrible than those of kings....We do not know what war is. We have had a glimpse of it in South Africa. Even in miniature, it is hideous and appalling." Yet we end this bloody century, "the American Century," led by a president with the same proclivity as his foreign-policy godfather, Woodrow Wilson, for placing Americans in harm's way without clearly articulated principles for determining when the use of force is in our national interest.

Historian John Lukacs suggests in his new book, *Five Days In London, May 1940,* that the 20th century did not begin until the onset of World War I in 1914, and that it effectively ended with the collapse of the Soviet Empire in 1989. If he's right, Bill Clinton has taken the United States 10 years into a new epoch with the same Wilsonian foreign policy it had 85 years ago. Is this a good thing?

No, says Patrick Buchanan in *A Republic, Not an Empire.* He calls the current approach "global democracy as panacea." Buchanan compares this neo-Wilsonian foreign policy with the approach of Republican internationalists who, he claims, advocate a "benevolent global hegemony." He condemns both policies, contrasting them with his own noninterventionist views, which he terms "enlightened nationalism."

Although Buchanan makes a good case for nonintervention, most of the attention given his book has focused on his views of World War II: that Hitler posed no threat to U.S. national security and that we should have let the Nazis and the Soviets fight it out. Is Buchanan right? Equally important, can you advocate a noninterventionist foreign policy today without also concluding that American participation in World War II, at least with respect to Nazi Germany, was unnecessary? Buchanan and other revisionists would probably say no.

Ironically, Buchanan uses Wilson's protégé, Walter Lippmann, to define a foreign policy of "enlightened nationalism." As Lippmann wrote in 1943: "We must consider first and last the American national interest. If we do not, if we construct our foreign policy on some kind of abstract theory of our rights and duties, we shall build castles in the air. We shall formulate policies which in fact the nation will not support with its blood, its sweat, and its tears." "Castles in the air" aptly conveys the core of Clinton's foreign policy.

Buchanan's chilling Chapter 3 preview of "America's Future Wars" is excellent, as is his subsequent revisionist survey of American foreign policy through the 1920s. Those are the "good" parts of his book. Unfortunately, there are also "bad" and "ugly" parts, the former being his protectionist trade policies and the latter his restrictive and implicitly racist immigration policy. You decide what this means: "One-tenth of the population of Mexico, the Caribbean islands, and Central America is already here—and more are coming. If immigration continues at present levels, America will cease to be a First World nation by 2040. A majority of Americans will no longer claim Europe as their ancestral home."

Buchanan is much better on other matters. His treatment of World War I, for example, while derivative and often third-hand, is very good. Buchanan correctly complains about the airy and imprecise goals enunciated by Wilson in his 1917 war message to Congress: "But the right is more precious than peace, and we shall fight for the things which we have always carried nearest to our hearts, for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free." Precisely the kind of empty rhetoric that again animates American foreign policy.

Buchanan's criticism of the Versailles Treaty is extensive; he cites a scathing contemporary editorial from the progressive, pro-Wilson *New Republic*: "Americans would be fools if they permitted themselves now to be embroiled in a system of European alliances. America promised to underwrite a stable peace. Mr. Wilson has failed. The peace cannot last. America should withdraw from all commitments which would impair her

freedom of action."

Addressing the 1920s, Buchanan debunks the alleged "isolationism" of the Harding-Coolidge administrations, quoting British historian A.J.P. Taylor in support of his case. "American policy was never more active and never more effective in regard to Europe than in the nineteen-twenties," Taylor wrote in 1961. "Reparations were settled; stable finances were restored; Europe was pacified: all mainly due to the United States."

Buchanan gives due credit to the foreign policy of the Harding, Coolidge, and Hoover administrations for their determined pursuit of naval disarmament treaties and their attempts to ease the crushing reparations imposed on Germany at Versailles. Buchanan correctly acknowledges that, ultimately, the naval disarmament treaties of the 1920s did no more to prevent World War II than did the 1928 Kellogg-Briand Pact, which outlawed war as an instrument of national policy.

But he does not call the Republicans to task for failing to use the enormous leverage of $10 billion in Allied war debts to remove completely the reparations imposed on Germany at Versailles. Britain would have agreed to do so, but only if the U.S. in turn forgave its loans to the Allies. Together, the two countries would have been a force that the French would have been unable to resist. Thus, the U.S. failed to do the one thing within its power that might have removed a primary cause of World War II. It's not as if they weren't warned. John Maynard Keynes' *The Economic Consequences of the Peace* forecast in 1919 that the drastic penalties imposed on Germany would lead to another war.

Any analysis of our involvement in World War II—and whether the 1930s have a foreign policy lesson to teach—must begin with the Great War and its aftermath. While the United States had no responsibility for starting World War I, its financing of the Allies and its subsequent intervention had everything to do with what happened after.

Would the century have been different had we kept our boys over here? Buchanan thinks so, and he's in good company. Here, for example, is a revisionist observation from Churchill, a 1936 quote resurrected by Frank Johnson of Britain's *Spectator* in response to the negative reaction to Buchanan's work: "America should have minded her own business and stayed out of the world war. If you hadn't entered the war the Allies would have made peace with Germany in the spring of 1917. Had we made peace then there would have been no collapse in Russia followed by communism, no breakdown in Italy followed by fascism, and Germany would not have signed the Versailles Treaty which has enthroned Nazism in Germany. If America had stayed out of the war all these *isms* wouldn't today be sweeping the continent of Europe and breaking down parliamentary government, and if England had made peace early in 1917, it would have saved over 1 million British, French, American and other lives." Buchanan makes the same point: "The war to make the world safe for democracy made the world safe for Bolshevism, fascism, and Nazism. Such were the fruits of U.S. intervention, victory, and Versailles."

While wrong about World War II, Pat Buchanan and other revisionists are right about World War I—as was Churchill. The U.S. shouldn't have intervened. Our vital interests weren't at stake.

Why, then, does Buchanan avoid drawing the obvious conclusion that Wilson's policies were an indispensable factor in the origins of the next war? Probably because Buchanan wants to distance the U.S. from any responsibility for the onset of World War II, so as to better advance what have become his most controversial arguments. These are, first, his condemnation of the foreign policy of Franklin Roosevelt, which involved us in World War II, and second, his effort to resurrect what he believes to be the unfairly tarnished reputation of the leaders of America First in the 1930s.

Buchanan's arguments and those of many other World War II revisionists share the same problem: Their understandable dissatisfaction with FDR's duplicitous foreign policy leads them to conclude, erroneously, that U.S. vital interests were not threatened by Nazi Germany and that, accordingly, Roosevelt led us into an unnecessary war. But one doesn't necessarily follow from the other.

Here is Buchanan's rationale on Hitler: "If Hitler could not put a soldier into England in the fall of 1940, the notion that he could invade the Western Hemisphere—with no surface ships to engage the United States and British fleets and U.S. air power dominant in the west Atlantic—was preposterous."

Buchanan underestimates Hitler. In September 1940, when Buchanan says we were safe, Hitler concluded a formal military alliance with Japan, an overtly hostile act. And as historian Norman Goda demonstrates in *Tomorrow the World: Hitler, Northwest Africa and the Path Toward America* (1998), in early 1940 Hitler awarded a contract for the Messerschmitt 264, known as the "Amerika Bomber." Its range enabled it to fly to the East Coast of the United States, deliver five tons of bombs, and return without refueling.

As for a navy, in January 1939 the Germans awarded contracts for six H-Class battleships of 56,000 tons each, all to be completed by 1944. Goda also shows that Germany made plans in 1940 to seize the Azores and Cape Verde Islands in the Atlantic from Portugal for use as bases for their long-range aircraft and their blue-water navy. Also in 1940, German diplomats negotiated extensively with Spain and Vichy France to attain bases in Casablanca, Dakar, and the Canary Islands. Hitler didn't need the Amerika Bomber, the six battleships, or the Atlantic bases to defeat England and Russia.

Even if Buchanan is wrong when he says Hitler had no designs on the Western Hemisphere, however, he could still argue, as did those in America First, that the U.S. simply should have spent more on military deterrence rather than go to war against Germany. Like America First, Buchanan also argues that "Stalin's Russia...was a far greater long term threat than Hitler's Germany." Republican Senator Robert Taft said as much in a speech in June 1941.

John Lukacs disagrees. A conservative and staunch anticommunist, Lukacs emi-

Losing the Peace: Woodrow Wilson didn't intend to serve as midwife to the births of Soviet Russia and Nazi Germany, but so it happened. (Pictured: Allied delegation at Versailles)

grated from Hungary in 1946 at the age of 23, a few steps ahead of the Soviet takeover. He explained in his 1992 book, *The Duel: 10 May–31 July 1940: The Eighty Day Struggle Between Churchill and Hitler*, why communism was a lesser threat in 1940: "In spite of its international pretensions and propaganda, Communism did not go very far outside the Soviet Union. ...Alone among the great revolutions of the world —consider only how the American and French revolutions had soon been emulated by a host of other peoples, in Latin America and in Western Europe, often without the support of American or French armies—Communism was unable to achieve power anywhere outside the Soviet Union until after the Second World War."

Lukacs then explains why, even before Hitler, authoritarian dictatorships posed a greater threat to market democracy. Specifically, in the 20 years before 1940, liberal parliamentary democracy had failed and been abandoned in scores of countries all over the world. As Lukacs writes: "These changes were not the results of external pressure. They were the results of spontaneous developments. As early as 1930 it seemed (and this was three years before Hitler's coming to power in Germany) that the rise of authoritarian dictatorships in the wake of the failure of parliamentary and capitalist democracy was a natural and worldwide phenomenon."

Lukacs' theme in *The Duel* was that during the summer of 1940, "Hitler came closer to winning the war than we had been accustomed to think." In *Five Days in London, May 1940*, he narrows his focus to May 24–28, when Churchill faced down his opponents in the British War Cabinet, primarily Foreign Secretary Halifax, and persuaded the full Cabinet that Britain should not seek peace terms from Germany through the good offices of Italy. (Hitler's terms would have been quite generous at that point.)

The War Cabinet debate was bitterly fought. A Liberal Party member for most of his career before 1924, Churchill was mistrusted by most Conservatives, and Halifax's not indefensible position was that Britain should at least ask what peace terms would be. It is for this reason, Lukacs explains, that "Hitler was never closer to his ultimate victory than during those five days in May, 1940."

Lukacs empathizes with the anticommunism that motivated many of those in America First. As he acknowledged in *The Duel*, "Most people who opposed the struggle against Hitler were not necessarily his sympathizers." Instead, like Taft, they had convinced themselves that communism and the Soviet Union were a greater danger than Hitler. The prime reason that Taft—a brilliant man about whom there is much to admire—advanced for this view was that communism appealed to the many, fascism to the few.

Lukacs says this is plainly wrong. The author of *The Hitler of History*, Lukacs modestly claims in his preface to *Five Days* that he has "an advantage" over others who in the past 20 years have written on Churchill, Halifax, and the politics of war: his "knowledge about Hitler—or rather my familiarity with documents and other materials relating to him." *The Hitler of History* supports his claim. His insight into Hitler—and the threat he posed to Western civilization beyond military aggression—is compelling. That a dedicated anticommunist like Churchill also had such an insight on Hitler goes far to explain why, to the dismay of revisionists like England's John Charmley or Americans like Buchanan, Churchill didn't do the prudent, logical thing in May 1940 and seek peace with Hitler. It also explains Churchill's agreeing to a temporary alliance with Russia.

As Lukacs writes: "At the end of May 1940 and for some time thereafter, not only the end of a European war but the end of Western civilization was near. Churchill knew that, inspired as he was by a kind of historical consciousness that entailed more than incantatory rhetoric.... If Hitler wins and we fall, he said, *"then the whole world, including the United States, including all that we have known and care for, will sink into the abyss of a New Dark Age, made more sinister, and perhaps more protracted, by the lights of perverted science."* (The italics are mine.) Churchill, argues Lukacs, "understood something that not many people understand even now. The greatest threat to Western civilization was not communism. It was National Socialism. The greatest and most dynamic power in the world was not Soviet Russia. It was the Third Reich. The greatest revolutionary of the twentieth century was not Lenin or Stalin. It was Hitler. Hitler not only succeeded in merging nationalism and socialism into one tremendous force; he was a new kind of ruler, representing a new kind of populist nationalism...It was thus that

in 1940 he represented a wave of the future."

A problem with World War II revisionists is that, as Lukacs observes, "had Hitler won the Second World War, we would be living in a different world." What kind of world? Revisionists need to answer that. Lukacs makes a good case that Hitler, as "the greatest revolutionary of the twentieth century," would have inspired, if not imposed, a new populist, nationalist (and racist) paradigm for the world based on National Socialist Germany, replacing the market democracy paradigm which has prevailed throughout much of the world today. As for Churchill's "New Dark Age" protracted by "perverted science," imagine a world with a Nazi atomic bomb and no Manhattan Project.

So far as Buchanan is concerned, Reagan, with his restrained and prudent use of military force, was the last good president; he criticizes George Bush for the Gulf War. In doing so, he ignores what was the unifying military theme of both the Reagan and Bush administrations and what came to be known as the Powell Doctrine, after the former chairman of the Joint Chiefs of Staff: that the American military would not be used without civilian leadership articulating a clear, achievable goal supported by a consensus of the American people, and accompanied by the willingness to use overwhelming force to accomplish the objective as quickly as possible. Designed to avoid further Vietnams, the criteria contained in that doctrine are rarely achievable—as they should be. Yet they reflected then and reflect today the noninterventionist (and non-Wilsonian) tendencies of the American public with respect to the use of the military. And if followed consistently, they would go a long way toward achieving the foreign policy advocated by most free-trade noninterventionists. Needless to say, the Clinton administration has utterly abandoned the Powell Doctrine in favor of frequent military intervention to no clear purpose but only when there is minimal risk to American (though not innocent civilian) lives.

We must study history. And then study it some more. We must recognize the mistakes of the past if we are to avoid them in the future. Clinton and other neo-Wilsonian internationalists have failed to do that. While wrong about World War II, Buchanan and other revisionists are right about World War I—as was Churchill. The U.S. shouldn't have intervened. Our vital interests weren't at stake. Wilson didn't intend to serve as midwife to the births of the Soviet empire and Nazi Germany, but so it happened. The Republicans compounded the mistake in the 1920s by failing to use the enormous leverage of Allied war debts to remove the draconian reparations imposed on Weimar Germany.

The world has paid a heavy price for Wilson's errors. It took the rest of the century to correct them. Let's not make the same mistakes again.

Contributing Editor Michael McMenamin (mtm@walterhav.com) is a lawyer in Cleveland.

Muddled Masses

By Stuart Anderson

Heaven's Door: Immigration Policy and the American Economy, by George Borjas, Princeton: Princeton University Press, 263 pages, $27.95

Throughout the history of American immigration, critics have viewed each new generation of arrivals as a threat to the nation's prosperity and culture. George Borjas, an economist and professor of public policy at the John F. Kennedy School of Government at Harvard University, sounds that warning yet again in his new study, *Heaven's Door: Immigration Policy and the American Economy.* Borjas is no nativist know-nothing: He is the author or co-author of many peer-reviewed articles on immigration and a major voice in the ongoing debate on the subject, so his book demands careful attention. So, too, does his life: Borjas is a Cuban-born refugee, yet the immigration policies he proposes would have precluded his own family's arrival in this country. That irony undercuts his anti-immigrant prescriptions as fully as the inconvenient facts he ignores.

The central argument of *Heaven's Door* is that America is being harmed economically because it allows citizens and permanent residents (green card holders) to sponsor close family members for immigration. Borjas writes that such immigration patterns are a direct result of the 1965 amendments to the Immigration and Nationality Act, and that we should change the law.

His argument is flawed. First, the book is ahistorical, suffering from a lack of understanding of—or an unwillingness to acknowledge—the discriminatory treatment that the 1965 legislation sought to address. Second, Borjas uses inappropriate data to support his conclusions, failing to distinguish between legal and illegal immigrants, and using information on illegal immigrants to advocate reducing legal immigration. Third, he assumes immigrants remain economically static, ignoring much evidence that they adapt to America by acquiring skills or training unavailable in their home countries. Finally, Borjas writes as if his conclusions are generally accepted —which they are not—and neither engages nor refutes criticisms of his earlier work.

Some history is necessary to understand the changes in immigration policy that occurred in 1965. In the 1920s, Congress replaced what had been a policy of nearly open immigration with "national origins" quotas that, in effect, barred Asians, Italians, Greeks, and Jews. These quota laws, passed after lobbying by the Ku Klux Klan and others, codified the eugenics theories of Madison Grant, whose work focused on the supposedly inferior skull sizes of Jews and other immigrants.

The 1965 amendments eliminated these quotas and carried forward almost intact the family immigration categories put in place by the 1959 amendments to the Immigration and Nationality Act. Although on paper half of the available immigration slots under the quotas were reserved for skill-based immigration, 86 percent of the visas issued between 1952 and 1965 went to family immigration, according to the Immigration and Naturalization Service.

Borjas is simply wrong when he states that the 1965 act "enshrined a new objective for awarding visas...the reunification of families." The historical records at Ellis Island make clear that most immigration prior to the 1920s was also family-based, and such unification never entirely lost its role. In fact, a report of the House Judiciary Committee on the 1959 legislation states, "The recognized principle of avoiding separation of families could be furthered if certain categories of such relatives were reclassified in the various preference portions of the immigration quotas." Joyce Vialet of the Congressional Research Service analyzed the 1965 Immigration Act and concluded, "In response to the demand for admission of family members, Congress enacted a series of amendments to the Immigration and Nationality Act (INA), beginning in 1957, which gave increasing priority to family relationship. The family preference categories included in the 1965 Act evolved directly from this series of amendments. Arguably, the 1965 Act represented an acceptance of the status quo rather than a shift to a new policy of favoring family members."

Pledging Allegiance: In making his case against immigrants, George Borjas ignores contrary data.

Under current law, a U.S. citizen can sponsor a spouse, child, parent, brother, or sister, while a green card holder can sponsor a spouse or child. We also accept refugees and employer-sponsored immigrants. Approximately 75 percent of family immigrants are spouses or children. Borjas argues that such immigration practices have caused numerous problems:

Education. Using U.S. Census data, Borjas concludes that immigrants today are less skilled than natives. But the Census includes data about many *illegal* immigrants. If one measures only legal immigrants, as the New Immigrant Survey (1998) does in a sophisticated research project led by RAND economist Jim Smith, one arrives at quite different conclusions. The New Immigrant Survey's findings directly contradict Borjas. "The median years of schooling for the legal immigrants, 13 years, is a full one year higher than that of the U.S. native-born," the survey concludes. It would seem that, on balance, legal immigrants are not less skilled than natives. Legal immigrants do congregate at the top and bottom of the education scale, but less so than Census data imply. Besides, economists agree that immigrants increase America's labor productivity most when they fill niches at the top and bottom.

Earnings Growth. Based on his study of the Census data, Borjas finds that the earnings of immigrants never catch up with those of natives. But other researchers using the same Census data, including refugees and illegal immigrants, have questioned that finding. Writing in the May 1999 *American Economic Review*, economists Harriet Duleep, a senior research associate at the Urban Institute, and Mark Regets, a senior analyst at the National Science Foundation, found that the gap in earnings between new immigrants and natives largely disappears after 10 years in the United States, with immigrant wage growth faster than native (6.7 percent vs. 4.4 percent).

Borjas misses this point because he excludes the self-employed, a major statistical blind spot when looking at immigrants. If, out of 100,000 immigrants, 60,000 started restaurants and software firms, and 40,000 worked as waiters, Borjas would count only the earnings of the 40,000 waiters. Moreover, if 10,000 of the waiters later started their own successful restaurants, Borjas would remove them from calculations of immigrant earnings growth, thus further biasing the results downward.

A July 1998 study by Stephen Moore of the Cato Institute supports the Duleep-Regets findings. It shows a direct correlation between time spent in America and economic well-being, finding that after two decades immigrants' home ownership rates exceed 60 percent, while their poverty rates fall below those of natives.

Fiscal Impact. Borjas portrays immigrants as fiscal liabilities by citing information on the annual costs of immigrant households from a 1997 National Academy of Sciences (NAS) study. Yet economist Ronald Lee of the University of California, Berkeley, who performed the key fiscal analysis in the NAS report, testified before the Senate Immigration Subcommittee in 1997 that such data are highly misleading. "These numbers do not best represent the panel's findings and should not be used for assessing the consequences of immigration policies," Lee testified. The problem, Lee found, was that calculating annual numbers requires using a model that counts the native-born children of immigrants as "costs" created by immigrant households when those children are in school but fails to include the taxes those children pay once they grow up and enter the work force.

According to Lee, the entry of a typical immigrant to the U.S. has a positive cumulative impact within the immigrant's life-

time: Taxpayers save $80,000 as a result of that entry, most of it during the lifetime of the immigrant and his offspring. "Most immigrants arrive at young working ages, with their education already paid for," testified Lee, and they "help pay for government activities such as defense for which they impose no additional costs." Borjas asserts incorrectly that any benefits come only after the passage of hundreds of years. As for the fiscal impact of *legal* immigration on the states, Berkeley's Lee said that, with the appropriate assumptions, a dynamic analysis would likely show 49 of the states coming out ahead, with the 50th, California, a close call.

Overall Immigrant Contributions. Borjas argues that the economic contribution of immigrants to the economy is only $8 billion a year. Cato's Moore and others have called that assertion absurd, noting that Borjas' methodology depends on immigrants being identical to natives and with no benefits accruing to Americans from immigrant entrepreneurs, immigrants with abilities different from natives, a larger economic pie, or a greater selection of goods and services. Borjas asserts immigrants save Americans money—and thereby benefit the economy—only if they lower native wages. That would mean that Hungarian-born Intel founder Andy Grove has provided no economic benefit to America, even though Intel today employs over 65,000 people and has net revenues of $26 billion a year.

In the San Francisco area alone, 2,775 companies led by Chinese and Indian immigrants have annual sales of nearly $17 billion and employ more than 58,000 people, according to Anna Lee Saxenian of the Public Policy Institute of California. Economies of scale, immigrant-induced productivity improvements, and other factors that Borjas concedes would exponentially increase the immigrant benefit to the economy are not included in his book because, he says, they are difficult to quantify. Even if that's the case, he should at least concede that his $8 billion figure tells us very little.

Borjas further asserts that immigrants who succeed in the U.S. would likely succeed in their own country. But if this is true, then Borjas should provide a list of all the great semiconductor firms started in communist Hungary after Andy Grove fled in 1956. In fact, immigrants come here precisely because oppressive political or economic policies block them from succeeding in their own countries.

Labor Market Impact. Borjas argues that native high school dropouts nationally experience lower wages because of immigrants. This rests on the assumption that low-skill natives leave states in response to increased immigration, thus perhaps explaining why numerous studies have not detected negative wage effects from immigrants. However, 1997 research by Columbia University economist Francisco L. Rivera-Batiz demonstrates that Borjas' theory cannot be correct. To the extent that any native out-migration is measurable in states that receive a lot of immigrants, it's actually college-educated natives who have left (and possibly for reasons that have nothing to do with immigration).

Critics of immigration can't explain why, if legal immigration is supposed to be so harmful, America remains a society rich in opportunities. George Borjas can't explain it either.

Borjas does not appear to have researched the out-migration question himself, nor does he refute Rivera-Batiz's conclusions. Instead, he writes, "The few studies that attempt to determine if native migration decisions are correlated with immigration have yielded a confusing set of results."

Borjas' labor-market analysis has other problems. For example, he sets up a model that guarantees immigrants have a negative effect by assuming they fill all the same jobs as natives, rather than allowing for the more likely scenario found by many other economists that immigrants are complements to natives in the labor market.

Also, Borjas' assertion that we have too many workers appears mistaken to anyone monitoring today's economy or long-term labor trends. Under current immigration levels, the U.S. labor force will grow by a (possibly inadequate) 40 percent between 1995 and 2050, according to the National Academy of Sciences. Under Borjas' immigration proposals, the U.S. labor force would grow by perhaps half that much.

The restrictionist argument that lower-skilled jobs have almost all disappeared is contradicted by an August 1997 study by economist Linda Levine of the Congressional Research Service. Levine concludes that "many occupations with limited educational requirements are experiencing above-average rates of job growth or substantial increases in employment levels." In 2005, writes Levine, "about one-half of all jobs" in America will require "no more than a high school diploma."

To solve problems that better research indicates do not exist, Borjas recommends the adoption of a Canadian-style point system, in which a government body assigns points to such characteristics as education level and admits only those who achieve a designated score. In practice, Borjas' plan would transfer power to federal bureaucrats at the expense of individuals, families, and employers. "A point system has many imperfections," concedes Borjas. "A few hapless government bureaucrats have to sit down and decide which characteristics will enter the admissions formula, which occupations are the ones that are most beneficial, which age groups are to be favored, how many points to grant each desired characteristic and so on."

After noting that the list of occupations, each assigned points, takes up 10 pages in the Canadian system, Borjas writes, "Most of these decisions are bound to be arbitrary and clearly stretch the ability of bureaucrats to determine labor market needs well beyond their limit." As if bureaucrats are well suited to handle *any* labor market decisions. In any case, it's clear that no government test can ever measure life's most important intangibles: drive, individual initiative, and a commitment to family.

Borjas concedes that keeping out Mexicans is a goal of the point system. "Most likely," he writes, "the predominance of Mexican immigrants and of immigrants from some other developing countries will decline substantially." In other words it's not just bad policy but bad politics.

It's important to understand that those who advocate a more "skill-based" immigration system are also among the most vociferous opponents of skilled immigrants. In 1998, anti-immigrant groups and their congressional allies fought the expansion of "H-1B" temporary visas for high-skilled, foreign-born engineers, computer scientists, and others, as if adding 50,000 more professionals to a 130 million-person work force would mean the end of Western civilization. Borjas himself derisively refers to these scientists and engineers as "high tech braceros," equating them with migrant farm workers.

Borjas undermines any pretense of rigorous analysis when he writes, "I suspect that an annual flow of one million immigrants is probably too large." We should reduce this number, he thinks, to 500,000 (the average annual immigration level in the 1970s, he later notes). This is a breathtaking denial of opportunity to a half million people on the basis of unsupported suspicions.

But that's not the end of Borjas' proposal. Noting that establishing a point system would be useless if those excluded entered illegally, he argues that we should subtract the number of illegal immigrants each year from the number of legal immigrants. Based on INS estimates, that would further reduce legal immigration to 200,000 persons a year.

What would such a limit mean? If so restrictive a proposal had been the law in 1997, nearly 50,000 citizens would have been unable to sponsor their own spouse or minor children for immigration (there were 248,326 spouses and minor children of U.S. citizens who immigrated legally in 1997). In addition, the government would have prohibited citizens from sponsoring parents, adult children, or siblings, while green card holders would have been forbidden from sponsoring spouses or children. No refugees would have entered. And not one "skilled" immigrant would have been admitted, either through a point system or through high-tech company sponsorship, because no slots would have been available. Thankfully, there's little chance Congress would adopt such a proposal. In 1996, it turned back, by decisive margins, efforts to reduce legal immigration.

As for what to do about illegal immigration, Borjas advocates stiffer employer sanctions and improved identification documents, though he does not appear convinced those will do the trick. Illegal immigration is a legitimate concern. In places such as Douglas, Arizona, where illegal immigrants are literally trampling on ranchers' property rights, the interesting policy question raised by Gov. Jane Hull is whether illegal entry can be curtailed or prevented by a combination of law enforcement and market forces, such as by providing temporary visas to willing workers in hospitality and other service industries. But Borjas merely adopts the view of many restrictionists: We're not sure we can stop people who are entering illegally, so let's go after the people who immigrate legally. That's not an acceptable policy.

In 1962, George Borjas' widowed mother, with the help of Catholic priests, came with George to America on one of the last "freedom flights" from Cuba. With little money or education, his mother worked hard to raise George, and he obviously worked hard, too. Borjas writes, "Although my family and I entered the country as refugees, my family would have been unable to 'pass the test' implicit" in the policy he now advocates.

Critics of immigration can't explain why, if legal immigration is supposed to be so harmful, America remains a society rich in opportunities. George Borjas can't explain it either. "To this day, I continue to be amazed by the courage and boldness that my mother and millions of others exhibited in picking up the little they had, and starting life again in a foreign country—without knowing the language, the culture, or almost anything about it," he writes. "They all relied on their unshakable belief that the United States was a far better place, and that even if they themselves could not share in those opportunities, their children surely would." This is the same dream that brings so many to America. We benefit and they benefit.

We should admire his mother's courage and all that Borjas has accomplished. And by all means, we should read and ponder his book. But in the end it is George Borjas' life, not his book, that teaches us the most about the right immigration policy for America. ◆

Stuart Anderson is director of immigration policy for the Senate Immigration Subcommittee.

That Indie Jones

By Steve Kurtz

Stranger Than Paradise: Maverick Film-Makers in Recent American Cinema, by Geoff Andrew, New York: Limelight Editions, $38.00, 374 pages

I once asked a friend if he could see only "art" films or "Hollywood" films for the rest of his life, which would he choose? Being college educated (an English major, to be precise), he immediately opted for the former. I reminded him that we'd seen many action films together, but I couldn't recall his attending any documentaries or Bergman festivals. Rather than argue the point, he asked me the same question back. I suddenly realized it wasn't an easy question. Big Hollywood films may often be slick and empty, but they can also be a lot of fun. And art films can be stimulating, but they're often obscure in both achievement and purpose. I had to admit that I didn't really know the answer to my own question.

One man who can clearly answer the question is Geoff Andrew, a leading British film critic. *Stranger Than Paradise* is a tribute to those he considers "maverick American film-makers." Such "independent-spirited *auteurs*," he writes in the introduction, are the reason he thinks there's "still...hope for the American cinema." Though the claim is somewhat hyperbolic, it's still a legitimate project—critics should seek out the best. However, it does seem a modern prejudice that the search starts

at the fringes rather than the mainstream. After all, there's good and bad no matter where you look. It's the percentages that count.

Andrew sets out to illustrate his thesis through in-depth critical analysis of a number of favorite "maverick" directors. It's not clear that he proves his larger point that such mavericks are saving American cinema. But he certainly makes a good case that the directors he discusses—the Coen Brothers, Hal Hartley, Todd Haynes, Jim Jarmusch, Spike Lee, David Lynch, John Sayles, Steven Soderbergh, Quentin Tarantino, and Wayne Wang—have, in fact, created some of the most adventurous, exciting, and enjoyable cinematic works of the past two decades.

Their films are, on average, superior to standard Hollywood fare. Moreover, Andrew is right that they generally did it with a single-minded (or for the Coen Brothers, double-minded) vision not overly concerned with commercial considerations. Ultimately, such considerations are what set apart their films from mainstream projects. Due to huge expenses, even top Hollywood directors can't make any story however they please. In contrast, independent films are so relatively cheap that they can feature little known actors and unorthodox subjects.

Andrew is also an astute critic, making many good points along the way. For instance, he notes that John Sayles (*Return of The Secaucus Seven, Baby It's You, The Secret Of Roan Inish, Lone Star*), often accused of "merely" being a good screenwriter, is seriously underappreciated as a director. He makes a compelling case that David Lynch's award-winning *Wild At Heart* (1990) repeats old aesthetic tricks without the original feeling or content, while the generally dismissed *Lost Highway* (1997) was his most imaginative film since *Blue Velvet* (1986). His chapter on Ethan and Joel Coen (*Blood Simple, Raising Arizona, Barton Fink, Fargo*) demonstrates that, even though their favorite form seems to be the flashy genre pastiche, their seemingly disparate films have repetitions and symmetries that make each work a variation on a theme.

Stranger Than Paradise is not without flaws. Andrew is a bit too impressed by Todd Haynes, whose recent work, such as *Safe* (1995) and *Velvet Goldmine* (1998), has failed, for me, to live up to the promise of *Superstar: The Karen Carpenter Story* (1987), a 43-minute film done mostly with dolls and miniature sets. And he's a bit too dismissive of Quentin Tarantino's early, pyrotechnic writing in *Reservoir Dogs* (1992) and *Pulp Fiction* (1994), preferring what he considers a more mature style evinced by *Jackie Brown* (1997). Also troublesome are his plot descriptions, which, while necessary, tend to be long-winded.

A more substantial weakness—though no fault of Andrew's—is that the book was published first in Britain and only later in the United States, so some of the chapters are already dated. For instance, he ends his section on Steven Soderbergh worried that the director's latest work (1997's *Schizopolis*) is so far from the mainstream that he may "disappear...from film-making altogether." Soderbergh has since worked with the biggest stars (George Clooney, Julia Roberts) and the biggest budgets of his career. And it would be interesting to know what Andrew makes of such unconventionally conventional fare as David Lynch's latest, *The Straight Story*. The movie, a G-rated dramatization of 73-year-old Alvin Straight's trip from Iowa to Wisconsin via riding lawn mower to see his ill, estranged brother, is a significant shift for the director of *Eraserhead*.

Andrew makes a solid case that modern American independent filmmakers are creating vibrant works. But is it true that they are the lifeblood of American cinema? This notion is based on the mostly unexamined belief, popular among many critics, that Hollywood made challenging films in the late 1960s and '70s, until it discovered blockbusters such as *Jaws* (1975) and *Star Wars* (1977). Since then, goes this story, Hollywood has churned out mostly mindless, shallow movies in pursuit of bigger and bigger revenue streams.

Though this argument is oversimplified, there is something to it. While Hollywood has always produced its share of shallow entertainment, in the late '60s and early '70s major studio films probably were more ambitious and experimental than usual. There are a number of reasons usually given for this: Hollywood was losing its older audience and was unsure how to capture the new, baby boomer crowd; since World War II, foreign art films and a growing American underground movement had been influencing a new generation of filmmakers; there was a significant lessening of film censorship and loosening of social mores, allowing for exploration of new themes in more explicit ways; and an America disenchanted due to Vietnam and Watergate was ready for more serious fare (this last explanation seems less convincing than the others).

Why did that apparent golden age slip away? Whatever the general level of artistic accomplishment, the late '60s and early '70s were not a great time for industry profits. So Hollywood changed directions in its never-ending search for a crowd-pleasing, profit-maximizing formula. For all sorts of reasons—blockbuster films tend to require blockbuster budgets, and star salaries rose quickly as superagents demanded and got ever more, while supporting cast members' salaries rose along with them—big studio productions began to cost significantly more. Because of this, studios took fewer chances artisti-

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Pulp Theory: Geoff Andrew prefers the "more mature style" of Quentin Tarantino (pictured with *Jackie Brown* star Pam Grier).

cally and became more formulaic. Linear plots, simplistic heroes and villains, happy endings, and the like may not be aesthetically challenging, but there is a proven, pretty predictable demand for such things. And with a large and growing overseas market, visuals have become more important than words, leading to a greater reliance on special effects and spectacle. The result, goes the standard critical view, is today's parade of special-effects-laden mega-releases that are big on stars and explosions and small on substance and artistry.

So runs the standard argument to explain how Hollywood fell from grace. As Andrew notes, too often mainstream Hollywood movies are "simply 'product'—bland, gimmicky, mindless 'events' designed, through high profile marketing, to make a fast buck" resulting in "imaginatively moribund output." But it's not as if Hollywood has abdicated its artistic duties. Indeed, a better way to look at the rise of the independent films in the past few decades is to recognize that Hollywood has farmed out the smaller, more personal movies. Such films are almost certainly being made at as high a rate as they were 25 years ago, maybe higher—it's just that the studios aren't as directly involved (not a bad thing, incidentally, for auteurs seeking more creative freedom). Instead, the films come from a number of smaller releasing companies (e.g., USA Films, Strand, Fine Line, Artisan) or are distributed by divisions of major studios dedicated to "art films" (e.g., Sony Classics, Paramount Classics, Fox Searchlight, and Disney-owned Miramax). Interestingly, these "smaller" films aren't necessarily small—Miramax productions such as *The English Patient* or *Shakespeare in Love* (both Oscar winners) cost in the neighborhood of $30 million. Moreover, the distinction between the major studios and others has broken down somewhat. So much so, in fact, that even Andrew has to admit many of the "mavericks" he discusses—the Coen brothers, Spike Lee, David Lynch, Steven Soderbergh—have worked with big studios and big money.

But even if there is more indie fare out there, it's not as if the Hollywood heavies always play it safe, either. As I write this, big-studio films such as *American Beauty, Fight Club,* and *Three Kings* are in wide release. All take real risks in form and content. (Whether they succeed fully is, of course, another question altogether.) The sort of comparison Andrew implies throughout his book between the "typical" major-studio production and the "typical" indie offering is almost inevitably skewed by grossly uneven distribution patterns. The major studios put out about 100 to 200 wide-release films a year. That compares to the thousands upon thousands of independent films that get made annually, only a small percentage of which get a theatrical—or even a video—release. If you could see only the two or three best Hollywood films a year, you might get a different view of the average big-studio offering.

In any case, it's still an open question whether—or precisely in what way—"art" films are better than broad-based entertainment. Just because something's a huge hit doesn't mean it's good, but plenty of people still seem to fall for the opposite fallacy—that anything the mob likes must be bad. Historically, from Sophocles to Shakespeare to Shaw, many of the "greatest" artists were also popular artists. Steven Spielberg and James Cameron may work with big budgets and please an enormous demographic, but that doesn't mean they've sold out. And why exactly should someone be embarrassed for liking *Die Hard* or *Aladdin* or *Men in Black* as much as or more than contemporaneous "serious" films? Indeed, it sometimes seems as if makers of art films treat the difficulty they cause their audience as the sine qua non of artistic achievement. To quote Preston Sturges from *Sullivan's Travels*: "There's nothing like a deep-dish movie to drive you out in the open."

I was optimistic that, by the time I finished this review, I'd be able to answer definitively the question I asked in the first paragraph. But I guess I don't have an answer. Except to say there's nothing wrong about going out to see *Gods and Monsters* one day and *There's Something About Mary* the next, and liking them both equally. (Actually, I think I preferred *Mary.*) Unlike Geoff Andrew, I can't pick sides in the war of the Independents vs. Hollywood. But perhaps the larger point is that, luckily, I don't have to.

Steven Kurtz is a screenwriter in Los Angeles who has worked in independent film but prefers getting paid.

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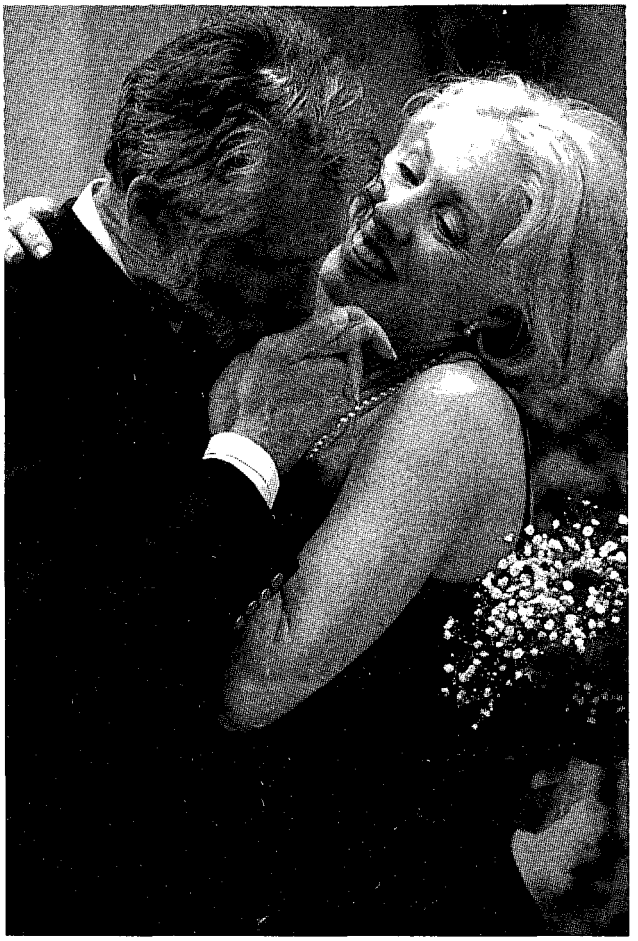

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Wiring Washington

How to make a killing in cable

By Thomas W. Hazlett

Back in 1985, the bidding for the cable TV franchise in the nation's capital brought out 100 brave entrepreneurs who invested $1.4 million in a company called District Cablevision. In November 1999, those selfless risk-takers finally cashed out. When the register stopped cha-chinging, they had ended up with $41 million—a whopping 29-to-1 markup. To understand just how fat a return that is, consider that over the same time the S&P 500 has grown a relatively lean 7-to-1.

To get into a deal as superb as the District Cablevision scam, you had to know someone. To be precise, you had to know Mayor Marion Barry—and know him well. The District Cablevision "investment team" included Barry's advisers, friends in government, pals in business, and associates in politics—including a city department head, a Democratic National Committee member, and a big contributor to the mayor's campaigns. These important folks were given 25 percent of the District Cablevision franchise, a $130-million investment, in exchange for about 1 percent of the actual capital cost.

When the register stopped cha-chinging, District Cablevision's original investors ended up with a whopping 29-to-1 return on their money. How'd they do it? The old-fashioned way: government-granted monopoly.

This sort of deal—typical of the arrangements that helped wire America for cable—sanctioned a form of graft in the name of "the public interest." In the late 1970s, when the feds finally allowed cities to issue cable franchises, it took only an instant for local bigwigs and cable operators to realize that they could combine forces and end up really rich.

The key was monopoly—not the Microsoft variety, hashed out in a competitive marketplace, but the real thing, the government-granted-and-enforced type. Cities had the legal authority to control access to municipal rights of way. They seized the opportunity to block multiple cable companies from entering town and gaining market share through open and fair competition. Instead, municipal franchising authorities were commissioned to select a sole licensee who would best serve the public. (Technically, these firms were issued "nonexclusive" franchises, meaning that other companies could theoretically get licenses of their own and compete. I personally know individuals who have spent more than a decade trying to get a second "nonexclusive" franchise. And who have won a Supreme Court case. And still haven't gotten City Hall to issue that franchise.)

To be sure, monopoly franchises were a tough sell. There had to be a cover story, a "public interest" reason why rivals should be blocked from risking private capital in pursuit of customers. The favored rationale: Cable was a "natural monopoly," and hence competition could not be sustained. Only local government was in perfect position to extract promises from franchisees—low prices, excellent service, state-of-the-art technology, "free" infrastructure for schools and libraries.

To get the franchise, cable companies would set up a dummy corporation and issue 20 percent of the stock to "rent-a-citizens," local investors selected for their influence with the mayor and city council. (In D.C., the local distribution was 25 percent, perhaps owing to the area's greater sophistication in such matters.)

The companies did in fact make promises to get the franchises. Big, fat, juicy promises. District Cablevision, for instance, pledged to provide 78 channels of programming, an "Information-net" for local government, quick implementation, and low prices. And, of course, it promised to keep control local, running the system with minority investors who were active in the community.

So what happened once District Cablevision won the franchise? Within two months the company came back to the city council to renegotiate its terms. The system was quickly sold to TCI, the world's largest cable firm, and the photo ops with local African-American "owners" quickly faded into the misty watercolors of the parent corporation's annual report. The system took forever to construct; nearly half the city still could not get cable service into the 1990s. The I-net has never been built, and the bargain prices never materialized—rates began at nearly double the promised level. Even today, some 15 years and generations of telecommunications technology later, the system boasts less capacity than originally promised.

That's the sizzling performance that led to the 29-to-1 return. With the sale of TCI to AT&T in 1999, the Courageous 100 lined up to cash in. As per the terms of the deal, they needed the city council's permission to sell. According to all reports, the city council was outraged—at the decade-plus of broken promises, the years of abysmal service, the shoddy technology, the rising prices, and the arrogant attitude that have made "District Cablevision" a swear word throughout the city.

So how did the council vent its righteous anger? In a way that seems a fitting end to an affair conducted not merely in the name of but at the expense of the public. The council approved the franchise transfer in a unanimous vote.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) is a resident scholar at the American Enterprise Institute and an economist at the University of California at Davis.

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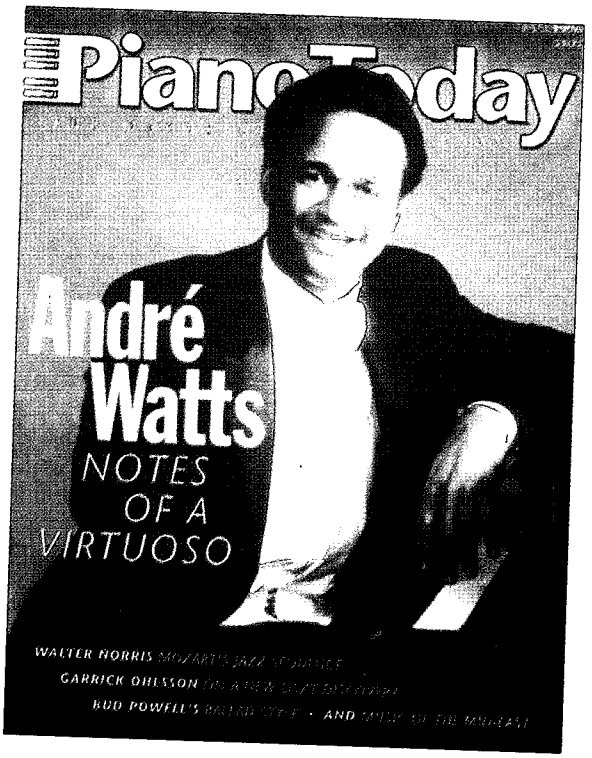

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